



**UNIVERSITY  
of  
GLASGOW**

**An Examination of  
Some Legal Problems Relating to  
INTERNATIONAL TRADE  
IN  
AGRICULTURAL PRODUCTS**

**A critique of the evolving international agricultural trade  
regime of developing countries under the auspices of the  
GATT, by particular reference to Uruguay Round Trade  
Negotiations.**

**Thesis submitted for the degree of Doctor of Philosophy**

**By**

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## Abstract

This study critically examines the legal aspects of the agricultural trade performance of developing countries in GATT Multilateral Trade Negotiations. Following an introductory Chapter outlining the general background of trade in agricultural products and defining the main elements of the thesis, Chapter Two focuses on an analysis of the substantive agricultural trade provisions within the GATT. It also argues that GATT rules in farm trade are generally weaker than those which apply to other sectors, and thus warrant strengthening.

The third Chapter examines the trade achievements of developing countries in seven consecutive multilateral rounds of trade negotiations under the auspices and contractual rights and obligations of the GATT. It considers the reality of many sectors of particular interest to developing countries such as agriculture, textiles, clothing and footwear, which have been subjected to '*exceptional*' treatment. The Chapter gives a chronological examination of the evolving agricultural trade regime of developing countries after World War II, up to the Uruguay Round negotiations.

Chapter Four embodies the basic argument of the thesis by analysing two different perspectives of developing and industrial countries in the system. It argues that, despite the inclusion of Part IV to the GATT in favour of developing countries and the application of special and preferential treatment, these countries have been the main victims of disarray in the agricultural trading system. Their efforts to increase export earnings in the context of the existing GATT framework are shown to have been hampered or undermined by strong protectionist measures of industrial countries. The strong need for developing countries to receive permanent special and preferential treatment in their exports to industrial countries is outlined as is their demand to be more integrated into the trading system.

It argues that the new waves of bilateralism and regionalism by industrial countries, even under the umbrella of Article XXIV, has negated impacts on the principles and practice of multilateralism. An ever-growing number of bilateral trade-



arrangements have been agreed outside the framework of GATT, to the detriment of weaker trading partners. Serious trade conflicts and high budgetary costs were experienced by industrial countries in the agricultural sector in the 1980s and that, combined with the growing recognition that farm programmes were not working effectively, convinced governments to establish a '*fair and market-oriented trading system.*'

The fifth Chapter analyses the status of agricultural trade in the final Uruguay Round negotiations and investigates the conflict that arose as a consequence of the increasing protection afforded to the agricultural sector within nearly all industrial countries. It indicates that in the UR there were signs of change. The developing states tried to use the external trading environment as a vehicle to speed their development. It is why a number of these countries were actively involved in the launch and decision making process of the UR and its outcomes.

The final Chapter seeks an optimal trade perspective to benefit all contracting parties by analysing the positive moves toward a global consensus in the entire history of GATT negotiations. The final remarks also identify the conclusions of the thesis. This suggests that it is time that industrial countries recognise the increased participation of their developing partners. Consideration should be given to economic, political and social concerns, such as food security, environmental protection and overall employment, which can build an equitable international trading environment that every country could get its fair share of the market. It also concludes that despite achievements in liberalizing trade in many sectors, the overall international trading environment, and especially the agricultural sector, warrants a substantial improvement redressed in favour of developing countries.

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Case on: Pasta dispute: See GATT, BISD, 29th Sup. [1981-1982], PP. 42-47.

Case on: Sugar dispute: See GATT, BISD, 30th Sup. [1982-83], pp.39-43 .

Case on: Poultry dispute: See GATT, BISD, 30th Sup. [1982-83], pp.39-43 .

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## Preface

I was born in a rural and agricultural community in the central part of I.R.of Iran. Although I moved to the capital, Tehran, in my early school years, I still felt the suffering of agricultural communities in the developing world.

My father was running a small business as well as a carpet making workshop. For the first time in my life I saw the difficult and harsh process of producing an agricultural product, when we cultivated our comparatively big, (6000 sq.m) backyard of peas production. Since then the love of agriculture and nature never diminished in my consciousness.

Later, while I was serving in the Ministry of Education consulting on a nationwide practical educational programme on delicate handicrafts, and the expansion of the famous Persian carpet industry and when I finished my law studies at Tehran University, I devoted my knowledge to rural and agricultural communities by serving as a legal consultant in the agriculture and rural development sector, being involved in agricultural and land disputes, even efforts for better legislation for rural communities.

In the course of my study, I wrote some articles in Iranian national newspapers introducing the GATT system to the Iranian people and media.

After the formal request of Iran to consider possible accession to the General Agreement, a national committee has been set up to examine the potential benefits or losses of joining the GATT or its successor WTO. I hope this background and the presentation of this study eventually will benefit the developing world amongst whom I was born and I hope to serve the cause of their well being.

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 British Library, and Trade Policy Research Centre in London.  
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Finally, needless to add, I alone am responsible for the possible errors and infelicities. I have tried to realise and appreciate any source or reference, but if by human or computer error any reference may have been deleted or mis-interpreted, I apologise to those authors or sources in advance.

## Abbreviations

AASM	Associated African States and Madagascar
ACP	African, Caribbean and Pacific Countries
ACTP	Advisory Committee on Trade Policy
ADB	Asian Development Bank
AFTA	Asian Free Trade Area
ASEAN	Association of South East Asian Nations
APEC	Asia Pacific Economic Co-operation
BOP	Balance of Payments
BSE	Bovine Spongiform Encephalopathies (Mad Cow Disease)
CACM	The Central American Common Market.
CAP	Common Agricultural Policy (of the European Community)
CCC	Customs Cooperation Council
CCP	Common Commercial Policy (of the European Community)
CET	Common External Tariff
CPC	Committee Programme and Coordination
CSD	Committee on Surplus Disposal
CSE	Consumer Subsidy Equivalent
CTA	Committee on Trade in Agriculture (GATT)
DSB	Dispute Settlement Body
EAGGF	European Agricultural Guidance and Guarantee Fund
EC	European Community
ECE	Economic Commission for Europe.
ECJ	European Court of Justice
ECOSOC	Economic and Social Council of the United Nations
ECU	European Currency Unit
EDC	Economic Development Committee.



EEC	European Economic Community.
EFTA	European Free Trade Association.
FAA	Final Agreement on Agriculture in Uruguay Round.
FADN	Farm Accountancy Data Network.
FDA	Food and Drugs Administration (US)
FOGS	Functioning of the GATT System
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNG	Group of Negotiations on Goods
GNP	Gross National Product.
GNS	Group of Negotiations on Services
HMSO	Her Majesty Stationary Office
ARC	International Agricultural Research Centre
IBRD	International Bank for Reconstruction and Development
ICA	International Commodity Agreement
ICJ	International Court of Justice
ICO	International Coffee Organisation
ICRISA	International Crop Research Institute for Semi-Arid
IDA	International Development Association
IDS	Institute for Development Studies
IFAD	International Fund for Agricultural Development (UN)
IFAP	International Federation of Agriculture Producers
IGA	International Grain Agreement
IFPRI	International Food Policy Research Institute
IHGC	International Hop Growers' Convention
ILCA	International Livestock Centre for Africa

IMF	International Monetary Fund
I.R.Iran	Islamic Republic of Iran
UN	United Nations
UNDP	United Nation Development Programme
USITC	United States International Trade Commission
UNCTAD	United Nations Conference on Trade And Development
ILM	International Legal Materials
ITO	International Trade Organisation
IWA	International Wheat Agreement.
JWTL	Journal of World Trade Law.
LAIA	The Latin American Integration Association.
LDCs	Less Developed Countries
MAFF	Ministry of Agriculture, Fishery and Forestry (UK).
MFA	Multi-Fibre Arrangement
MFN	Most Favoured Nation principle
MPP	Market Promotion Programme (U.S based)
MTN	Multilateral Trade Negotiations
NAFTA	North American Free Trade Associations
NICs	Newly Industrialized Countries
NRBPs	Natural Resource Based Products
NLEA	The US ' <i>Nutrition Labelling and Education Act of 1990</i> '
NTB	Non-Tariff Barriers
NTMs	Non-Tariff Measures
MTN	Multilateral Trade Negotiations
OCT	Overseas Countries and Territories
ODI	Overseas Development Institute ( EC based)
OECD	Organization of Economic Co-operation and Development.

PPA	Protocol of Provisional Application
RBP	Restrictive Business Practices (VERs)
S&D	Special and Differential Treatment
TDR	Trade and Development Report
TEA	Targeted Export Assistance
TIFA	Trade and Investment Framework Agreement, (US based )
TNC	Trade Negotiations Committee
TPRM	Trade Policy Review Mechanism
TR	Tokyo Round of Multilateral Trade Negotiations
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
USDA	The United State Department of Agriculture
UR	Uruguay Round of Multilateral Trade Negotiations
VAT	Value Added Tax
VRA	Voluntary Restraint Agreement
WDR	World Development Report (annual report)
WGSA	Western Grain Stabilization Programme (Canada)
WIDE R	World Institute for Development Economics Research
WFP	World Food Programme
CARICOM	The Caribbean Common Market.

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The terms dollar (\$) refers to the US dollars, unless otherwise stated.

The term 'billion' signifies 1,000 million.

Exports are valued **f.o.b.** and imports **c.i.f.**, unless otherwise specified.

Use of the hyphen (-) between dates representing years, e.g.1991-1993, signifies the full period involved, including the initial and final years.

A dash (-) or (0) in the tables indicates that amount in nil or negligible.



In the name of God, Most Gracious, Most Merciful.

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**A critique of the evolving international agricultural trade regime of developing countries under the auspices of the GATT, by particular reference to Uruguay Round Multilateral Trade Negotiations.**

**Introduction**

**PURPOSE, CONTENTS AND STRUCTURE OF THE THESIS; DELIMITATION AND METHOD OF THE STUDY.**

The General Agreement on Tariffs and Trade (GATT) was designed to preside over the new economic order that would follow the end of the second World War. Some commentators called it the '*constitution of world trade*'.<sup>1</sup> If this claim were true, it would have a great role to play in the global framework of economic activity. Since the creation of the GATT (1947), agricultural trade has been at the core of many controversial discussions but the GATT system has not been successful in liberalising agricultural trade. Is this because of the inherent protectionist nature of trade in agricultural products or because of the conflicts of interests between industrialised and developing countries or disputes amongst the powerful countries of the North themselves? (EC, US and JAPAN in particular).<sup>2</sup>

The latter group criticise each other for unjustified protectionism resulting in distorted conditions of competition. Members of the developing part of the international community criticise the industrial countries for discriminatory restrictions on their farm products, and other protectionist measures. Perhaps there are other invisible obstacles for

reaching a consensus in liberalising agricultural trade. The present thesis aims to discuss certain of these problems.

Farm trade is an important source of income for a number of countries, not least for the developing countries which have to fulfil their development needs and finance their long term development plans.<sup>3</sup> It is believed that agricultural products are subject to discrimination compared with industrial goods. Agricultural products are described as 'latecomers' into the legal regulatory system of international trade and the GATT system in particular.

Agricultural trade involves some of the most complex issues in the entire web of international trade negotiations, despite the fact that agriculture represents only 10% of total world merchandise trade.

Sustainable agricultural development is heavily influenced by national agricultural policies. Both domestic and foreign policies directly or indirectly affect the performance of a national food and agricultural sector. The efforts at international coordination of agricultural policies within GATT negotiations deserve, and obviously receive, serious attention, especially those policies on the agenda of the negotiations that are supposed to have the most adverse effects on other countries.

#### ***A- THE MEANING OF THE GENERAL AGREEMENT AND THE SCOPE OF THE RESEARCH.***

There are two different views as to the meaning of the General Agreement: a)- as an international *agreement* containing the basic rules and principles for governing international trade relations, and b)- as an *organisation* functioning and operating as the main international forum for discussion and rule-making in the development of the international trading system.

Research on agricultural protection and its removal has become important in recent years with market-oriented structural reforms in many developing countries and the current debate over multilateral trade reforms in the GATT. It is worth noting that most GATT-related agricultural trade liberalization research has focused on aggregate measures of trade liberalisation, although research on protection and subsidy policies in fact have widely different functions and impacts.<sup>4</sup>

The main aim of the thesis is to examine the legal issues in agricultural trade rather than to discuss its political or economic aspects but, as Usher<sup>5</sup> has remarked; "it is not always possible to separate the law from the policy to which it gives effect". However, the main concentration in the present thesis is on legal issues, but economic elements and terms will be examined where relevant, since it is important to consider the economic background in agricultural trade from the internationally defined legal regime. Also the practical success or failure of these legal regimes in relation to industrial and developing countries is subject to investigation.

## ***B- CONTENT OF THE STUDY***

The function of international law in regulating international trade, with GATT as a main framework and instrument, involves not only the regulation of trade bilaterally, but also the management of fair competition amongst the members of the international community of states. A series of questions emerge as to how fair, and how competitive, the current system of trade in agricultural products is.

It is proposed to examine the main elements of the subject by reviewing the major agricultural issues in the rounds as well as protectionist measures of industrialised countries in this area. These may answer a series of selected questions relating to developing countries problems and their agricultural trade performance in the GATT negotiations. The thesis is divided into six Chapters as follows:

**(1) Chapter one**

The first Chapter provides a general background of the thesis and trade in agricultural products, the GATT legal system and relevant definitions. It comprises three sections. The first attempts to answer questions such as: What are the characteristics of agricultural products ? Are there any legal criteria for the definition of such products? What constitutes semi-processed products ? What are the problems peculiar to agricultural commodities ? (e.g. short life-span, labour intensive production, overcapacity and other related issues).

The next section proceeds to examine the relevance of agricultural trade in the economic development and prosperity of developing countries, including the degree to which such countries are dependent on agriculture and agricultural markets.

Section III concentrates on a concise historical background of trade in agricultural products, investigating the extent to which, since the end of World War II and the inception of the GATT system in the late 1940s, trade in agricultural products has featured as a controversial subject of discussions aimed at the creation of a general system of regulation for international trade in agricultural products. The attention is concentrated upon the legal as opposed to the economic aspects.

The section also considers how it was that the wealthy industrialised nations of the west achieved their large scale economic efficiency through increased international trade in manufactured products, and why they failed to pursue comparable gains through the liberalisation of agricultural trade. The reasons for the rapid expansion of agricultural trade in the post war period is summarily surveyed. Different ways to protect farming populations in the west by paying heavy direct or indirect subsidies are also subject to a brief examination.

Due consideration is also given to the fact that, in a highly complex and still



relatively under regulated market for trade in agricultural products, rules for special arrangements or treatment for special products exist and have to be discussed. This is mainly because of the special nature of agricultural products.

International Commodity Agreements have attracted a disproportionate amount of attention in the post war period. The simple reason for their prominence is that if we are considering the validity of GATT as an important model for regulating agricultural trade relations, it is relevant to examine the impact of similar or alternatives attempts such as Commodity Agreements and other efforts submitted under the auspices of UNCTAD, FAO, WFP etc. on trade in farm produce.

## ***(2) Chapter two***

The main argument of Chapter Two deals critically with the current GATT framework and its development and shortfalls in relation to agricultural trade. It consists of three Sections. They set the scene for the arguments that are followed in the thesis and refer to the proposed roots of the problems that have arisen since the establishment of the GATT system.

It is not possible to discuss the complex system of GATT unless the scope, limits, functions and organs of the system are examined. It specifically refers to GATT principles, rules of procedures and its main decision making machinery especially those that could assist developing countries such as the International Trade Centre (ITC). Such a discussion is useful since any new suggested amendments or changes in policy would have to be fitted into the current framework.

Provisions of the GATT on agriculture are the subject of section II. It covers many substantive provisions in the GATT system, important for examining their respective roles in the substantive arguments of the thesis. Its main focus is on Article

XI and its sub -articles on border protection measures such as quantitative restrictions, etc. It elaborates other provisions such as: Article XVI regarding export subsidies and domestic subsidies; Article XIX on emergency action on imports; and Article XXVIII concerning modification of schedules.

It should be realised that many provisions are devised to initiate development prospects in the GATT system, especially to support developing countries trade performance. These provisions directly or indirectly relate to agricultural trade issues. They are namely: 1979 enabling clause of the GATT, Article XVIII in favour of developing<sup>6</sup> and least developed countries, Article XIX, Article XXIV, Part IV of the GATT for consideration of developing countries interests, and the Generalised System of Trade Preference (GSP) in favour of developing countries. The relevant arguments and counter arguments on the validity and the effectiveness of these provisions are also subject to examination. Due to the importance of these provisions they form a separate discussion in Chapter Four relating to perspectives for developing countries.

The final section of Chapter Two is devoted to the dispute settlement procedure and its impact on agricultural trade disputes in the GATT. The importance of such a system became apparent in recent years because of the ever increasing frictions and disputes regarding trade in agricultural products among the major trading nations, due to intensified competition for export markets and the use of export subsidies. It is possible to say that the dispute settlement mechanism has an important impact on agricultural trade provisions. The nature of such disputes is examined together with the different stages of dispute settlement, establishment of panels and the development of the mechanisms. It will also be shown how conflicts of interest between the parties are reflected in panel proceedings.

### **(3) Chapter three**

Agricultural trade is the backbone of the economy of the developing countries, and hence its role in the development and prosperity of these nations cannot be ignored. Before examining the agricultural issues in the past rounds, it is important to realise that this large sector of international commerce, crucial to the developing countries, has been excluded from the GATT framework and has been subject at times to extremely protectionist regimes.

It is important to find out why crucial sectors of agriculture and textiles were excluded and to find out under which economic or political pressures agriculture was returned to the GATT agenda in the latest rounds, especially in the Uruguay Round negotiations. The section also examines the major tasks of the first six rounds of trade negotiations in the GATT, particularly the role of industrialised countries in shaping the negotiations. After ten years of GATT operation (1948-1958) the most remarkable move in recognising agricultural trade problems especially those of developing countries, was the '*Harberler Report*' (1958) as the outcome of the panel of experts in committee III of the GATT.<sup>7</sup> There were other committees and reports related to either developing countries or agricultural trade which will be discussed in Chapter Four as perspectives of developing countries in the GATT.

In general terms, in the period leading to the Kennedy Round negotiations (1960) the world market for agricultural goods had been, typically, in chronic surplus. Consequently, the emphasis for much of the negotiations was on protecting market positions against imports of farm products. The importing countries were defensive about their farm interests and critical of aggressive marketing policies used by exporters.<sup>8</sup>

The Kennedy Round took certain steps, especially by classifying the agricultural trade negotiations in different categories such as cereals group, meat, dairy and other

products. The Tokyo Round in the 1970s adopted more practical steps to solve the agricultural trade problems. The steps in question included considering special treatment of agricultural products, market management, suggestions for adjustments to domestic trade policy and changes in the decision making structure of the GATT.

The most crucial achievement of the Tokyo Round was the introduction of so called *codes of conduct* which provide detailed and specific rules on subjects that have been covered in the GATT in general terms.<sup>9</sup> They are known as: The Dumping Code, the Standards Code, the Import Licensing Code, Customs Valuation Code, Procurement Code and the Subsidies Code. The question related thereto is why the industrialised countries have been disappointed by the small number of developing countries who became signatories to these Codes?<sup>10</sup> What explains the suspicions of developing countries toward the codes ?

After reviewing the impact of the seven previous Rounds on agricultural trade issues, and the reasons for their success and failure, the main question remains as to what progress has been achieved, what has been left undecided and how is it possible to reconcile between conflicting demands in future. Lastly what options may led to an overall solution ? Before starting the analysis of the latest multilateral trade negotiations, it is possible to evaluate both developing and industrial countries situation, in order to seek an optimal perspective.

#### **(4) Chapter four**

The fourth Chapter of the thesis starts with a critical examination of the conflict of interests between industrialised and developing countries, the GATTs' supervision and attitudes towards these nations. It will also discuss the role of these two groups of countries in changing the patterns of trade in the GATT system.

The dominant position occupied by the GATT in the field of international trade

regulation has created a political environment for bargaining on trade issues between two distinguishable categories of nations, industrial and developing countries. These two groups are looking to secure their own interests in the system, but they did not have equal leverage for tackling their problems. It is mainly the wide gap between them in many political, social and economic dimensions that is the major obstacle. As a result of this unequal position, the present thesis examines the issues from two basic perspectives in the GATT system: (a) the perspective for developing countries and (b) the perspective for industrial countries. Each group has its own attitudes towards the GATT system. In this sense an intensive study of such attitudes requires an elaborate investigation of all effective elements of the present GATT rules and obligations.

The existence of two extreme views creates conflicts of interest in many areas. The final achievements of the GATT negotiations should contain substantive rules for reconciling the different views. These outcomes and objectives will complete the third perspective as an optimal perspective of the GATT in agricultural trade in favour of all contracting parties. It tries to bridge the gap between the first two perspectives or views. Such an outcome may be treated as an optimal trade regime in agricultural products in the GATT system, under which each Contracting Party may get its desirable fair share of the market.

Section I of Chapter Four contains the first perspective in question, with particular emphasis on development prospects for the GATT. It examines legal policy issues raised by the previous and current negotiations within the GATT system towards developing countries with reference to questions as to whether current welfare based legal policy can provide protection for developing countries' interests, or not.

The second sub-section explains what the term ' *special and differential treatment* ' for developing countries means and, more importantly, its significance for the various

negotiating groups in the GATT. It looks to special and differential treatment as a negotiating objective for developing countries and how significant it has been for their trade performance. Many developing countries may have good reasons to feel cheated of their rights under the current international trading system. It limits the liberalisation process to certain sectors, and accordingly does not accommodate the trade interests of all its participants.

The second perspective appears in section III with a critical analysis of the industrial states' views towards the GATT agricultural trade policies and their influence in shaping the GATT rules. Although there are many similarities on the general attitudes of the industrialised countries' towards the developing countries, nonetheless from a practical point of view, different policies and approaches exist. For this reason, the industrial countries are categorised as the EC countries, the US, Japan, and lastly, the OECD countries. Agricultural trade policies in the first three major trading areas is summarised in the section .

The efforts at international coordination of agricultural policies within GATT negotiations deserve and obviously receive serious attention, especially those policies on the agenda of the negotiations that are supposed to have the most adverse effects on the other contracting parties. The Common Agricultural Policy (CAP) of the EC appears to belong to that category. The EC and some other industrialized countries have been blamed for pressing, distorting, and destabilising world market prices through their highly protective policy measures. The US and *Cairns* group are therefore asking the EC to reduce their protection levels for temperate zone food products.

The section also examines how protectionist measures and their elements, such as tariff and non tariff measures along with other restrictions on trade, such as health and sanitary regulations, affect trade policies. Industrial countries are always able to find

escape routes for discharging their obligations towards other participants.

There are some criticisms aimed at the industrial nations for their negative attitudes towards agricultural trade liberalisation in the GATT system from the beginning. The GATT's ability to open up agricultural trade was undermined when certain explicit allowances for liberal agricultural trade practices were written into its rules, including the use of quantitative import restrictions and export subsidies. To what extent are these in contradiction with the industrialised countries' claims for liberalisation of farm trade in GATT negotiations ? Is there an element of hypocrisy ?

Another important issue is the regionalization of the world economy that became a central issue engaging both policy makers and analysts. The EC integration programme, and its near future enlargement, the US regional plans from Alaska to Mexico especially the US- Canada Free Trade Agreement in addition to other intra-regional trade and investment in Asia (APEC), and the subsequent negotiation failures of the Uruguay Round talks have fed fears that the liberal multilateral system could fragment into regional blocks.<sup>11</sup>

### **(5) Chapter five**

The next Chapter examines the reason for launching the Uruguay Round. It refers to earlier attempts to launch a new round, and addresses the unresolved issues for the new agenda. The study of the agricultural trade issues became more important where it was ignored largely in previous negotiating rounds. One of the reasons for managing agricultural trade issues outside GATT was the ability of industrial countries to promote domestic agricultural production by a wide variety of support mechanisms, giving rise to the accumulation of surpluses of many products and necessitating the subsidization of exports.

Developing countries who were mainly producers or exporters of agricultural commodities have been major losers in such a situation. Their traditional markets have

been increasingly eroded while the pressure of surpluses on the world market has seriously reduced their export earnings. Consequently, many industrial countries have found interest in the positive outcome of the Uruguay Round negotiations on agricultural products.

Another reason for ignoring agricultural products in previous rounds was primarily due to historical reasons, since at the inception of the GATT a number of countries made it a pre-condition for their accession to the Agreement that special waivers and protocols be granted that allowed them to accord special treatment to their agricultural commodities, so that agriculture was virtually taken out of the negotiations agenda.

The Punta Del Este Ministerial Declaration (1986)<sup>12</sup> presented the main aims and desires of the participants in broad terms. It obliged the GATT members to take appropriate steps on (1) the reduction of import barriers (2) increasing control over direct and indirect subsidies affecting agricultural trade, and (3) minimising the use of sanitary and health regulations as a form of trade barriers.

The Round inherited the conflict of interests from previous negotiating rounds, particularly in the agricultural sector. It is crucial to find out the extent to which the Uruguay Round was expected to solve deadlocked issues and build a consensus between conflicting interests. Did the industrialised nations give up their protectionist programmes? Are the final results of the Uruguay Round negotiations another repetition of previous Rounds ? The developing countries for their part do not want past regimes which paid no attention to their products of interest. They expected a firm timetable for dismantling agricultural subsidies to emerge from the Uruguay Round.<sup>13</sup> A close examination of the negotiating groups (committees) in the Uruguay Round elaborates the real situation of agricultural trade in the Round.



## **(6) Chapter six**

It is clear that conflicts of interests exist between the major players so that the success and survival of their interests is largely dependent on an overall compromise of the big players in the game and their genuine contribution to liberalising farm trade. At the same time to create an international trading environment, to assure more favourable treatment of trade, specially by providing better market access and less barriers for the weaker members of the international community of states.

These points are reflected in the optimal perspective in the third section. An optimal regime is formally defined as one which brings the maximum of benefits to all trading partners, in terms of benefits to consumers in the form of cheap imports and home prices, and in terms of adequate income for farmers as corresponding to the notion of a fair standard of living with an adequate level of income for population groups involved in production of agriculture and foodstuffs products.

Some of the issues addressed are important for building a consensus between differing interests, such as defining different criteria for the two major groups of interests. How were the GATT negotiations in the key agricultural products conducted to accommodate the real demands of both groups ? What were the options, and how far would the domestic economies of the parties benefit from reform ? It will be also important to emphasise how the complexity of existing programmes made negotiations especially difficult. Have the industrialised nations sacrificed their national interests in farm support policies to give more favourable treatments to product from developing countries ?

The section will suggest some optimal solutions for reconciling the demands of extreme groups and thus reach a compromise between their demands. The result will be reflected in the proposed optimal perspective that is reflected in Chapter Six, especially measures for securing the interests of developing countries. The last section of Chapter Six is devoted to the final conclusions of the thesis.

### ***C- THE ORGANISATION OF THE STUDY***

The thesis aims to deal with the state of negotiations on agricultural trade as they stood at the end of 1993 when the final stages of the Uruguay Round were concluded.<sup>14</sup> This date is the cut-off date for the purpose of the research. Except for the final text of the Agreement on Agriculture and some relevant articles, the main material sources are before 1994.

The thesis is intended to provide an extensive research on the development of agricultural trade in the GATT negotiations; it discusses a list of the key issues under negotiation and the range of options proposed to deal with them. In addition to assessing conflicting views on the GATT agricultural trade regime of industrial countries, it focuses on the performance and opportunities of developing countries in the negotiations. It also examines the possible implications of the Uruguay Round results for developing countries. Owing to the great diversity of agricultural issues, it may not cover all aspects of the subject in their relevance to developing countries.

The negotiation issues included in the study follow the general work programme of the Negotiating Groups related to agriculture in the rounds as the issues are interrelated and often overlap, on many occasions their delineation into separate topics has not been possible in the thesis. The question of the appropriate treatment of agricultural interests of developing countries has been implicit in many negotiation agendas; they have been, in some discussion areas, interlinked with other surrounding issues, and they are correspondingly treated in the thesis.

As sources, primary legal texts, official publications, textbooks, periodicals, legal and economic journals have been consulted. GATT published and unpublished materials such as Basic Instruments and Selected Documents (in 40 Volumes), have been used as a matter of first priority.<sup>15</sup> During a visit to GATT headquarters and UN offices, especially the UNCTAD Commission, in Geneva, the author has had the opportunity to have access to first hand publications in the GATT library and UNCTAD documents in

addition to contacting experts.

Information from GATT contracting parties and their national trade ministries has been valuable. Since the study was written in the UK, and the European Commission was negotiating on behalf of the EC member states, information from the EC Commission, European Parliament, EC Publication office and other EC offices in Luxembourg, have been very valuable, including close contacts with the European Commission office in Edinburgh for access to many relevant (current) publications. Library collections like those of the British Library, National Library of Scotland, governmental departmental libraries and information offices, e.g. in the Department of Trade and Industry and especially MAFF, officially in charge of agricultural trade negotiations, have been very helpful. While by no means perfect, it was intended that the presentation of this study will make a contribution to the ongoing promotion of structural reforms in agricultural trade worldwide, and especially amongst developing countries, and a better understanding of major problems of these countries in the GATT system.

### Notes to the Introduction

1. It is also called "the anchor of the postwar trading system"- Bhagwati Jagdish, *The World Trading System at Risk*, Mass:Ballinger, London, (1991), at Preface p. vii.

2. The term 'industrial Countries' is used throughout the thesis to mean major industrial countries of the west or so called 'developed countries'. Since 'development' in its absolute term does not mean only economic or industrial development, some developing countries argue that although the role of economic or industrial development is very important, in the definition of development the role of moral, social and cultural factors could not be ignored.

3 .The vast majority of the people in the third world live and work in rural areas. Over 65 % are rurally based compared with less than 27% in economically developed countries. Similarly, 62% of the labour force is engaged in agriculture, compared with only 7% in developed nations. Agriculture also contributes about 20 % of the GNP of developing countries versus only 3% of the GNP of industrial countries. For more information see: UNCTAD, 'Agricultural trade expansion and protectionism, with special reference to products of export interest to developing countries ' (TD/ B/ C.1/239).

4 .Bellamy M. and Greenshields B.(eds.) Issues in Agricultural Development: Sustainability and Cooperation IAAE Occasional Paper No.6 U.K. (1992), p.39.

5 . Usher J.A., Legal Aspects of Agriculture in the European Community, Clarendon Press, Oxford,(1988), p.2.

6 .It must be realized that according to the latest amendment to part IV of the GATT, The words 'developed contracting parties' and the words 'less-developed contracting parties'" as used in Part IV are to be understood to refer to developed and least-developed countries which are parties to the GATT and, unless otherwise indicated, in all discussions relating to the thesis they only refer to contracting parties to the GATT. See Annex I of the General Agreement Notes and Supplementary Provisions, Part IV.

7 . See GATT, Trends in International Trade: A Report by the Panel of Experts, Geneva, (1958). More details of this report can be found in Chapter four of the thesis relating to perspectives for developing countries. See also GATT, BISD, Seventh Supp., Geneva, (1959), p.29.

8 . See Josling Tim E.' Agriculture in the Tokyo Round Negotiations'. Times Essay No.10, Trade Policy Research Centre, (1977). p.3.

9 . Beverly Carl .'Current Trade Problems of the Developing Nations' in S'arcevic Petar and Hans van Houtte, (eds.) 'Legal Issues in International Trade', Martinus Nijhoff, London, (1989), p.10, 108-109.

10 . Ibid at p.110.

11 . See more in Schott, Jeff J.'Trading Blocs and the World Trading System', The World Economy 14, 1st March 1991. See also 'Building blocks or stumbling blocks' for global trade liberalisation in Lawrence, Robert Z, Scenarios for the World Trading System and Their Implications for Developing Countries, Research Programme on Globalization and Regionalization, OECD Development Centre Technical Paper No.47, (Nov. 1991).

12 . The Punta del Este Ministerial Declaration was adopted on 20th September 1986. See, Leutwiler, G. Trade Policies for a better Future, The 'Leutwiler Report', the GATT and the Uruguay Round, Martinus Nijhoff Publishers, Lancaster, UK, (1987).

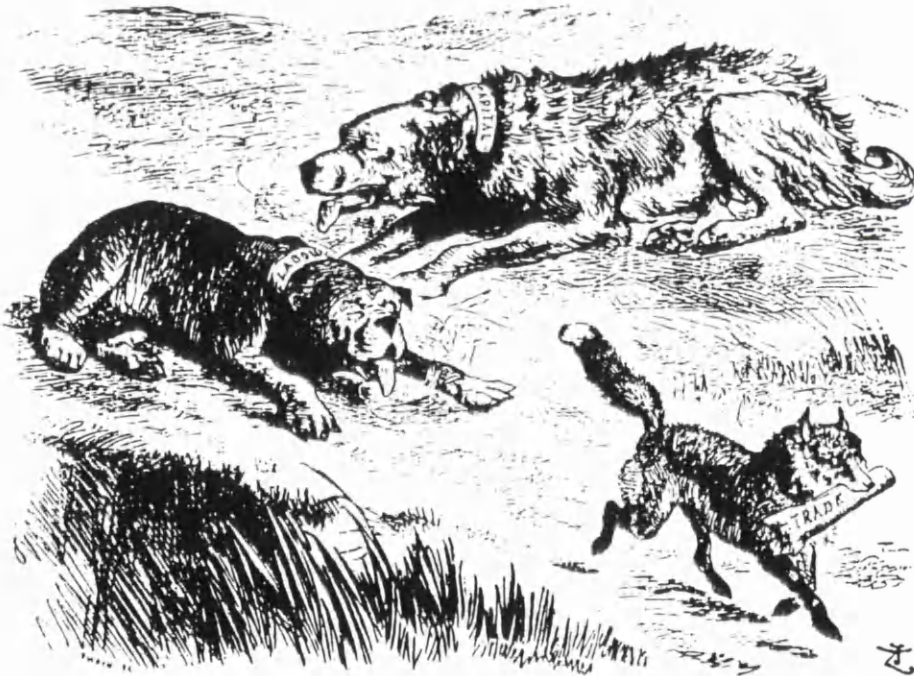
13 . Beverly M. Carl, 'Current Trade Problems of the Developing Nations,' in S'arcevic Petar and Hans van Houtte, (eds.), 'Legal Issues in International Trade', Martinus Nijhoff, London. (1990), p. 120.

14 .The negotiations came to an end on 15 December 1993, after seven years of intensive work and produced a Final Agreement comprising 550 pages, covering a wide range of issues including agriculture. More details can be obtained from MAFF or from GATT headquarters in Geneva.

15 . For having up to date knowledge of the GATT negotiations, radio and TV reports were also used to complete this study.

# CHAPTER ONE

GENERAL BACKGROUND; TRADE IN AGRICULTURAL  
PRODUCTS; THE GATT LEGAL SYSTEM; DEFINITIONS.



THE FOREIGN FOX.

(WITH APOLOGIES TO PROP.)

A technical cartoon appears on the front cover of the Thames Essay on: The Case against General Import Restrictions. The Cartoon was first published in February 1890.

## Introduction

.....In all, these developments make the present time one of the most exciting and important [areas] for analysts of trade policy since the advent of what might be called the 'Age of GATT'. The network of agreements, understandings, and generally accepted rules has created a system which, while not quite 'international law', nonetheless performs much the same functions.<sup>1</sup>

In preparation for the discussion of agricultural trade in the light of provisions of the GATT multilateral trade negotiations particularly in the Uruguay Round, the first chapter of this thesis attempts to define its main elements. This includes the definition of agricultural products and other relevant issues. Such clarification is of vital importance; without it, legal definitions and other terms used in the thesis would not be understood in context.

Section I attempts to provide answers to questions such as: what are the characteristics of agricultural products? Are there any criteria for the definition of such products in different legal systems? What constitute semi-processed products? What are the problems peculiar to agricultural commodities? A better distinction between agricultural and other industrial products and the need for special treatment of agricultural products are the subject of a sub-section. The role of international law and international economic relations is addressed, and the relevance of GATT and its agricultural trade regime to the economic development and prosperity of developing countries is considered.

In Section II, following some introductory descriptive notes with regard to the place of agricultural products in international trade, attention is concentrated on the

relevant legal aspects of international economic relations. The same section also refers to the place of agricultural trade in the economic development and prosperity of developing countries, including the degree to which such countries are dependent on agricultural markets.

Section III presents a concise historical background to trade in agricultural products, in order to promote a better understanding of the importance of trade in agricultural products. It investigates the extent to which, since the end of World War II and the inception of the GATT system in the late 1940s, trade in agricultural products has featured as a controversial subject. The main focus in this respect is on whether trade in agricultural products can be treated like any other sector in the GATT system.

International commodity agreements have attracted a disproportionate amount of attention of contracting parties when working out traditional and alternative instruments of international trade negotiations including agricultural products. If we are considering the validity of GATT as an important pattern for regulating agricultural trade relations, it is crucial to assess other models such as those submitted under the auspices of UNCTAD or FAO on trade in farm produce. Although the emphasis of Chapter I is on the chronological development of substantive GATT rules relating to international trade in agricultural products, the question of why trade in agricultural products has featured as a controversial subject of discussions in international trade relations is addressed.

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## **I. DEFINITIONS; SPECIAL CHARACTERISTICS OF AGRICULTURAL PRODUCTS; THEIR SIGNIFICANCE IN TRADE.**

What are agricultural products? How are their characteristics defined for the purpose of international economic relations and the legal standards which govern them? What are the differences between unprocessed, semi-processed and processed agricultural products, and what particular legal standards are applied to them? Why do we need to distinguish them from other industrial products? How do such characteristics of agricultural commodities as short life span, labour-intensive production, overproduction, government intervention (subsidies etc.) affect or complicate the legal approach to international agricultural trade ?

### ***A- DEFINITION AND SPECIFICATION OF AGRICULTURAL PRODUCTS***

The term '*agricultural product(s)*' needs some clarification. Without a proper definition it is difficult to refer to the relevant discussions in the context of GATT negotiations. In the first place, it is clear that they are not industrial products, but they may be unprocessed or processed products and as such they may be governed by different legal standards and may generate disputes. For example, is wheat flour a natural or a processed product? <sup>2</sup> An answer to this question in the negative or affirmative may make the difference between the possible application or exclusion of GATT rules. There are a number of other similar situations such those of pasta,<sup>3</sup> (in home market competition) canned fruit,<sup>4</sup> (export market competition) sugar<sup>5</sup>, poultry<sup>6</sup>. Each of them needs clarification.<sup>7</sup>

A distinction between apparently similar goods is, not least, important with



regard to the application of different tariffs at state borders and in the settlement of disputes arising from applied tariff charges. An acceptable distinction of certain products will close the door to any abuse or false nomination of other industrial goods as agricultural commodities claiming benefits from certain preferences at the borders. It may not always be possible to find a universally acceptable definition of agricultural products in all international agreements. The GATT, for example, does not appear to have a proper definition of agricultural goods or products, although there are some relevant references to them.

Before examining references in the GATT, it is possible to recall other international and national legislation and practice in order to adopt suitable definitions. However, it must be borne in mind that legal texts are often imprecise and may need interpretation by courts or arbitration tribunals. Secondly, legal texts may provide definitions which are particular to the purpose of the text itself. In order to arrive at a specific definition it may be necessary to consider several in turn.

***(1) Definition under the EC Law:***

Article 38 (1) EC<sup>8</sup> provides for the extension of the common market to agriculture and trade in agricultural goods and defines these goods as products of the soil, of stock farming and of fisheries, and also as products of first stage processing directly related to these products. Fishery products are considered as agricultural products. This approach equates fish farming to other agricultural activities. When fish farmers are culturing the fish eggs and growing them like other products of soil and water, it is possible to place them in the same category.<sup>9</sup>

In addition Article 38(3) EC refers to a specific list of products governed by the agricultural rules of the Treaty.<sup>10</sup> When the EC was established in 1957, the question arose as to which products should be added to the list by the EC Council of Ministers

within two years of the entry into force of the EC treaty in order to comply with the rules.

The European Court of Justice (ECJ) was called upon to distinguish semi-processed and processed goods. In case 185/73 HZA Bielefeld v. König, [1974] ECR 607, the Court gave a purposive interpretation to the phrase '*products of first stage processing directly related to basic agricultural products*' holding that the relevant point was the economic relationship between the basic product and the finished (final) processed product, rather than the number of technical processing operations involved. It held that there should be a clear economic interdependence between the basic primary products and the final processed products.

In cases of this nature, however, the price of the basic agricultural raw material ingredients in the final product becomes a completely marginal cost and, as a result, basic agricultural products in question may not correspond to the given ECJ definition. This means that the share of agricultural components of total ingredients of the final product should be quite substantive in comparison with added materials or substances. Tomato puree or different fruit concentrates could be examples of such products, i.e. basic agricultural products.

However, in practice, it has not always possible to have a clear distinction between agricultural and non-agricultural goods incorporating, nevertheless, an agricultural element. Sometimes, owing to the particular importance of some products, countries try to include them among agricultural goods in order to benefit from particular trading conditions. For example, at the time of the accession of Greece to the EC, special measures were adopted to include cotton into the agricultural commodities list. Although Annex II<sup>11</sup> itself was not amended to include this product, specific provisions were introduced<sup>12</sup> to include cotton production, marking its importance and '*recognising the*

*specifically agricultural character of this production*'.

Using such cases as a basis for providing a more clear and practical step, the EC Common Customs Tariff (CCT)<sup>13</sup> was created and developed under the International Convention on the Harmonized Commodity Description and Coding System (ICHDCS).<sup>14</sup> The Convention is regarded as the main practical source for the distinction (identification) of all products, including agricultural and raw materials.

Here two major legal considerations arise; 1)- products falling within the definition applied in *Bielefeld v. 'König'* are not to be treated as agricultural products unless they are specifically listed in Annex II<sup>15</sup> of the EC Treaty or in Regulation 7a, and 2)- when interpreting these lists, regard may be given to other headings of the (CCT) and to accepted aids used in the interpretation of the relevant tariff.<sup>16</sup>

Wool is another example of a product excluded from the definition of agricultural products. In case 77/83, *CILFIT v. Italian Ministry of Health*,<sup>17</sup> it was held that although this product is indisputably grown on sheep, it did not fall within the concept of '*animal products not elsewhere specified or included*' under Common Customs Tariff (CCT) heading 05.15b, included in Annex II.<sup>18</sup> In addition to the grounds listed in the case, the other reason for this approach could be the marginal cost of unprocessed wool in relation to wool yarn, which is at least one fifth of the price of the processed product.<sup>19</sup> Natural leather, with similar characteristics, cannot be considered as an agricultural product.

Regarding fishery products there should perhaps be a distinction between the industrial catches on the high seas by big ships, on the one hand, and fish farms in shallow internal waters, on the other. One may potentially separate these two different categories of fish possibly as industrial and agricultural products, especially when big factory ships are processing fresh catches for different frozen and canned fish products. This is an internationally applied norm or criteria accepted by the EC as well as other

organisations.

It is not possible to examine the list of other (disputed) commodities constituting a large variation in farm products. What is clear, however, is that the EC legal system has adopted clear definitions in regard to agricultural products, although it must be realised that a vast and controversial area relating to many agricultural processed product may still exist.

## **(2) Definition under US Law :**

In US legislation, chapter 4 of title 19 (customs duties) of the US Tariff Act of 1930,<sup>20</sup> in the section regarding '*countervailing and anti-dumping duties*', refers to the definition of industry producing agricultural products such as food processing, but not to the definition of agricultural products themselves, and supplies a partial definition for processed products:

In general terms, when an investigation involves a distinction of the processed agricultural product, producers or growers of the raw agricultural products<sup>21</sup> may be considered to be part of the industry<sup>22</sup> producing the processed product, if :

1) (i) the processed agricultural product is produced from the agricultural product through a single continuous line of production: and (ii) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission<sup>23</sup>, include price, added market value, or other economic interrelationships.

Chapter 4 of the Tariff Act also defines the processing of the product concerned as: "the process of a raw agricultural product through a single continuous line of production" based on two distinctive conditions:

(i) the raw agricultural product is substantially or completely [attached to] the production of the processed agricultural product; and (ii) [if] the processed agricultural product is produced substantially from the raw product.<sup>24</sup>

As a general criterion for the definition of agricultural products, the US definition has elaborated general criteria for distinguishing between processed and raw materials. It is similar to the ECJ approach in *HZA Bielefeld v.König*. When applying to processed and semi processed agricultural products, the US definition could be accepted in the absence of a more detailed and clear definition.

### **(3) The GATT Definition**

There is no definition of agricultural products under the General Agreement. Article XI:2(a) refers to export prohibitions or restrictions applicable to shortages of '*foodstuffs*'. Article XI:2 (c) refers to "import restrictions on any agricultural or fisheries product, imported in any form". According to the interpretive note included later in Article XI:2(c), it covers;

the same products when in an early stage of processing and still perishable, which compete directly with the fresh products and if freely imported would tend to make the restriction to fresh products ineffective.

Article XVI:3 also refers to export subsidies on '*primary products*' as defined in the Interpretative Notes and Supplementary provision thereto as:

any product of farm, forestry or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

Article XX(b) refers to the general exceptions for the adoption or enforcement of measures necessary to "protect human, animal or plant life or health"<sup>25</sup> by Contracting Parties.

A GATT panel, established under the Subsidies Code, examined the term '*primary products*', especially regarding processed commodities. The panel found wheat flour<sup>26</sup> to be a processed or non-primary product that became subject to the prohibition on export subsidies contained in Article 9:1 of the GATT Subsidies Code.

In considering the importance of a clear distinction between raw and processed

agricultural products for the purpose of taxes, there have been many long debates in the GATT dispute settlement panels, when certain processed products were exported while prohibited or allowed either under Article XVI:4<sup>27</sup> or the provisions of the Subsidies Code.<sup>28</sup>

During the Uruguay Round negotiations on agricultural products, it was indicated that products falling within Chapters 1 to 24 of the Common Customs Classification Nomenclature<sup>29</sup> (now the Harmonised System), and selected as agricultural products, could be considered by participants in a different light according to their own interpretation.<sup>30</sup>

Such practices may not be compatible with what would be intended in a strong and institutionally regulated trading system. As the CCCN definition is commonly accepted in the GATT system, I have taken it as the base for defining agricultural products for the purpose of this thesis.

### ***B- SCOPE OF COVERAGE AND CATEGORISATION***

Regarding the scope of coverage of agricultural products in the GATT, it should be noted that some of the 14 negotiating groups under the Uruguay Round have been dealing with issues that have implications for agricultural trade. Their respective mandates have overlapped with that of the Negotiating Group on Agriculture, especially with the mandates of the Negotiating Group on Tropical Products, and the group on Natural Resource- Based Products. Although in practice some of these, such as tropical products, were excluded from the negotiations agenda, they are clearly agricultural.

The categorisation of agricultural commodities is especially important when the question of application of individual tariffs arises. Internal and external protection measures and border controls based on a systematic control of different varieties of

agricultural products also indicate the need for the categorisation of agricultural commodities. Lack of a proper mechanism of categorisation opens the door to false declarations of invoices and generates confusion at border crossings. All products may fall into one of the main categories of Agriculture, Mining or Manufactures. Agricultural products are food and raw food materials.<sup>31</sup> Each of these is divided to include certain kinds and varieties of agricultural products.<sup>32</sup>

For example, the fruits alphabetical guide<sup>33</sup> includes every kind of fresh fruit, from the most familiar orchard and soft fruits to the exotic varieties now widely stocked by greengrocers and suppliers.<sup>34</sup> Categories for fruits can be divided into 34 kinds, and each of these then divided into different varieties.<sup>35</sup> Herbs are divided into 21 different species.<sup>36</sup> Spices are also divided into 26 varieties of species.<sup>37</sup> Fresh vegetables are divided into 46 different kinds.<sup>38</sup> Pulses are distinguished in terms of 18 different kinds.<sup>39</sup>

At present, the CCCN (now Harmonised System) is the basis for the categorisation of agricultural and other products in the GATT; but what developing countries need is to have a proper system of rules and regulations regarding each individual commodity of interest. At the same time, these countries need to establish their national standards systems with due regard to popular and current systems applicable in many industrial countries. They would then be able to pave the way for competing in the markets of industrial countries.

### ***C- SPECIAL CHARACTERISTICS AND CONDITIONS***

The special characteristics of agricultural products play a vital role in defining corresponding trade patterns. Because of these special characteristics and their special significance in the economy of developing countries, agricultural products require a different approach from that of industrial goods. Most industrial goods have a fixed

content of ingredients and application, which is different from agricultural products. If, for example, certain quantities of meat or fresh fruits are imported to a country, their quality may change at any point in transit. In addition, because of such characteristics, they deserve special and different treatment in comparison with industrial goods. Such a differential approach involves the protection of commodities derived from agriculture, whereas industrial products can tolerate greater competition. Unlike industrial goods, agricultural products, because of their nature, need more time and labour in their production, harvesting and packaging. The production process of industrial goods may take only a few hours or days, whereas agricultural commodities need months or years of intensive work for production. The whole production line of industrial goods may be adjusted or replaced quickly, but for agricultural products many other natural elements may be involved that may not be within human control.

### **(1) *Perishable Nature***

The perishable nature of agricultural products makes it difficult to sell them without considering the long distance transportation system, price fluctuations in the market and the nature of consumer demand.

Many fruits and vegetables are considered as highly perishable. Transporting them over long distances may be difficult, plus the fact that times of harvesting may have to be staggered according to the climatic zone of production. In practice there is no real regulated world market in fruit and vegetables, except for certain products which can be stored or frozen for long periods. The main trade arrangements for such products are made therefore in terms of volume, seasonal availability and geographical scope. For example, owing to competition and availability of local substitutes, products such as apples, bananas and citrus fruit, are subject to more elaborate regulations and border control measures.<sup>40</sup> In comparison, fresh vegetables are subject to a more liberal approach.



## ***(2) Bulky Character***

The bulky character of agricultural products can involve extra costs for labour, transport and adequate road systems to facilitate their movement, especially for their collection from the place of production and their delivery to a market. In remote and rural areas a high percentage of products may be destroyed before reaching their destination. For example, it was estimated that as a result of bulky character, inadequate packaging, and long distance transport, 70% of the potatoes in the former Soviet Union were lost. This may represent a problem common to many developing countries.

In comparison with agricultural produce, an equal volume of industrial goods, such as a set of cameras or radio cassettes, needs much less space, care and attention. For industrial goods there is no need for the further expenditure, attention and care after production, whereas in agricultural commodities, in addition to reasonable costs of transport, stocking and distribution, there are extra costs of preservation.

## ***(3) The Geographical Impact***

Geographical location and climate also influence the production of agriculture. In many areas such as Central and Western Asia, North Africa or the Middle East insufficient water resources, and scarcity of annual rainfall, mean that irrigation is the main task of farmers. In addition to the difficulties in cultivating the harsh lands, a large proportion of the production costs of farm products is spent on water. Finding water and cultivating or preparing the soil are essential aspects of farming. The farmers may rely on rain feed crops (harvests) that are heavily dependent on the scarce annual rainfalls in many regions. In contrast, Europe, the Far East, Japan do not lack water although excess rainfall may be an obstacle to growing particular products. In such areas water resources are a major element of productivity and can contribute to the reduction of production costs.

The total annual rainfall or the availability of rivers and other water resources has a direct impact on production costs. The extra cost of irrigation in most developing countries in the world, such as I.R.of Iran, in comparison with many Mediterranean and European regions, is a burden to developing countries' farmers. Even the shortage of sunshine in Northern Europe and the UK is another difficulty for producing many fruits and horticultural products; as a result, it affects the agricultural trade position of the relevant countries.

Another criteria in respect of climate is market demand for certain products. For example, in tropical climates, the demand for consumption of milk is not the same as areas of cold and moderate climates.

#### ***(4) Technical Advantages***

In recent years, by employing modern techniques in flat farmlands in North America and Europe, farmers have multiplied harvests, whereas in many parts of the developing world farmers are attached to traditional systems of farming in rough lands. The use of fertilisers and pesticides in the industrialised world has been another revolution in agricultural production. Available data and practical results show how direct efforts to use new methods have increased overall productivity and per capita earnings for farmers.

When industrial goods are produced, they may not require excessive care or expenditure for storage. Agricultural commodities, such as dairy and horticultural products, need substantial attention even after production (although there are new methods of cold storage, deep freezing etc.). It is, for example, not possible to keep fisheries products more than a few hours in normal temperatures after catching from the sea, especially in warm climates, if a modern system of refrigeration or sufficient ice is

not available.<sup>41</sup> Such technical advantages reduce production costs in the industrial world, as one of the main reasons why developing countries are not able to compete with industrial countries even if their labour costs are substantially lower.

In comparison with developing countries, industrial countries benefit from certain general and technical advantages such as; a)- the use of chemical preservatives, b)- access to industrial processes applied to different varieties of agricultural raw materials for preparing dried, canned or deep frozen products, and c)- the use of organic materials in production, whereas in developing countries many agricultural products may be destroyed at harvest time and before reaching the market.<sup>42</sup>

In EC countries, the consumption of processed products such as vegetables and fruit has been increasing as a result of general economic and technical developments and better standards of living. Certain EC products, such as tomatoes and peaches in which the Community is more than self-sufficient can be processed into juices and canned goods.<sup>43</sup> At the same time the EC imports a large amount of processed products from developing countries. Only developing countries that have the technical capacity to convert their agricultural products into processed products in conformity with EC standards enjoy access to EC markets.

One may live without using modern industrial goods (such as domestic electrical goods), no one can survive without food. This means that the degree of dependency on agricultural products is much higher than on other sectors. The security of food supplies is a high priority for any nation seeking a balance between the interests of farmers and consumers. It is also important to realise that economic independence is impossible without an adequate supply of foodstuffs for the total population of a country.

***D- PROBLEMS CREATED BY OVERPRODUCTION .***

Agricultural overproduction, a common phenomenon in industrialised, well developed countries, is a matter of concern not only for agricultural economists, but also for lawyers dealing with legal standards applicable to international agricultural trade. Dumping of domestic agricultural surpluses on international agricultural commodity markets may not only threaten the stability of commodity prices, but also disrupt the proper operation of legal standards applicable to trade in agricultural products.

With the legal relevance of overproduction and its international consequences as given, dumping practices by individual members of the international community of states may interfere with unwritten standards of fair competition and fair sharing of international agricultural markets.

Cereals overproduction in the US and dairy products surpluses in the EC are examples of such overproduction. In practice any attempt to regulate international markets has normally a direct effect on domestic policies of participating countries. For example, an agreement helpful to the EC countries to tackle its dairy overproduction problems will affect Australian and American policies. This is an area of agricultural trade and negotiations that also affects the interests of developing countries.

As stated before, the use of modern techniques by industrial countries and drought in recent years in the southern hemisphere, have created an opportunity for industrialised countries to use their huge surplus stocks as a bargaining position. The developing countries in such situations should have long term plans for dealing with the challenge, especially with dumping of surplus products in their markets.

***E- AGRICULTURAL PRODUCTS DESERVE SPECIAL TREATMENT***

In the present thesis a crucial question is why, in GATT negotiations, governments should treat agriculture as a '*special case*' or grant it a different treatment

in comparison with industrial products. Some believe that this may be a trivial question, because any sector of the economy should be regarded as a special case in so far as it is a recognisable sector. However, agriculture is the only special sector which i)- provides for many human essential needs, ii)- is subject to erratic output variations related to weather, iii)- employs millions of people in small businesses and provides jobs in rural areas where other employment opportunities are scarce, iv)- has special government ministries with deep seated involvement in economic and social programmes, affecting agricultural trade, and, lastly, v)- demands the adoption of new technology requiring a significant resource adjustment to alleviate existing problems.

Further distinctions between agriculture and other sectors are observable. At the political level, governments and politicians cannot ignore the significance of rural population votes at election times.

Consideration of the above factors indicates that agriculture is a special economic activity. It is vital to give agricultural products different treatment in comparison with industrial goods.

### ***F- THE SCOPE AND METHOD OF AGRICULTURAL NEGOTIATIONS***

In international trade in general, negotiations rest on the assumption that while each country has the sovereign right to impose and to alter conditions of import and export over its borders, as well as the right to organise and regulate its domestic market as it sees fit, such rights should be exercised with a discretion linked to an awareness that they can have an impact on other countries subject to international legal rules.

The latest Uruguay Round negotiations (1986-93) covered all agricultural products, raw and processed, giving priority to sectors in structural surplus and to those sectors where serious disruptions are foreseeable.<sup>44</sup> More substantive issues had to do

with methods of negotiation, objectives underlying these negotiations and negotiating tactics which might have prejudiced the negotiations' outcome. Concerning methods of negotiation, there are serious questions to be answered as to the appropriate techniques for establishing the framework to encourage fruitful discussions on agriculture.

If agricultural issues are assessed as not being fundamentally different from other economic or trade issues, the conduct of negotiations may be left to intergovernmental groups dealing with such matters as tariffs, non-tariff measures, safeguards and tropical products. In such situations agriculture would be subject to the same discipline as other economic and trade sectors, with mutual discussions of problems and exceptions and a final trade-off of interests among sectoral positions.

### ***G- GOVERNMENT INTERVENTION AND MANAGEMENT OF AGRICULTURAL TRADE***

As already hinted, government intervention plays an important role in the agricultural sector. In this regard certain questions arise such as i)- what should be the objectives of governmental intervention and management? ii)- who should manage the market? and iii)- how might a good quality of governmental management be accomplished ?

Certain objectives of government market management are closely bound with the assessment by governments as to the performance of agricultural markets. It is generally agreed that in the absence of government intervention, a number of important agricultural goods have a chronically unstable market price. Hence, stabilisation of the domestic market may be one of the prime objectives of governmental farm policies. The main aim of such policies is to have an effective and widespread central management of the market.<sup>45</sup>

### ***(1) State trading practices***

State trading has been a common practice in many former socialist countries of Eastern Europe and in developing countries. This is the most common way of controlling imports of agricultural products. The main aspect relevant to the present thesis is the role of state trading in developing countries, mostly concentrated on the public consumption products such as food and cereals.

In relation to GATT, the rules governing state trading have always been difficult in concept and even more so in their application. In theory, this matter is covered under GATT Article XVII, but in practice nothing has happened. Owing to the special nature of agricultural products, government intervention comes in many forms, but the use of state monopolies, or state-authorized monopolies, is widespread. Although in western Europe cooperatives predominate agricultural production and trade, state trading has been viewed largely as an instrument of socialist governments.

Wheat and coarse grains are particularly dominated by such intervention. In practice almost 90% of world trade in wheat and about 70% of trade in coarse grains is managed by governmental cooperatives and agencies.<sup>46</sup> Two distinctive elements can be found in GATT rules governing governmental monopolies operating in agricultural trade:

- 1)- that state trading bodies operate on a non discriminatory-basis, governed only by commercial considerations,
- 2)- that entities with import monopolies negotiate a limit on the level of protection applied in the form of a price make-up.

In practice, neither of these provisions has been enforced, giving the monopolies a freedom to operate without regard to rules normally applied to international agricultural trade. Generally two types of government intervention could be found in state trading practices .

**a- Government control of trading enterprises**

Legal constraints on the commercial policies of private sectors by governments who are setting up a monopoly or an enterprise under their control is common in many industrial and developing countries. Such a practice requires a means of influencing the flow of imports and exports potentially as effective as the imposition of tariffs or quotas. GATT contains a number of rules aimed at preventing this form of trade distortion. Among these provisions is Article XVII. The Article even applies to state enterprises that are facing competition from private firms unaffected by government control.

**b- Government procurement**

Government procurement is the term used to describe government practices in many countries for purchasing goods for their own needs and consumption. This practice in its broad form constitutes an effective element in many national economies and has usually been used as a means of supporting domestic producers. Not only under GATT, but also within the efforts of OECD, attempts have been made to reach international agreement on the reduction of such governmental preferences. The Agreement on Government Procurement of 1979, signed in the course of the Tokyo Round, has been a major step forward in resolving disagreement in this field.

Here we may put forward a substantive question as to who should manage the domestic market, the government or the private sector ? In other words, which policy serves the public interest and which policy clashes with accepted international legal rules governing the trade? In practice governments in their domestic market management or intervention policies have to consider cost-benefit factors. If they intend to gain some benefit from market management at an intervention level, they must also expect to pay economic and political costs .

Thus, political attitudes towards burden sharing are delimited by the extent to



which concessions would lead to advantages. It is clear that participants in trade, by virtue of their market position, have different abilities to participate in management; their actions will depend on the burden that they are prepared to shoulder. Some actions will be more effective than others.

Many developing countries have good reasons for their intervention policies in this field, such as supporting the producers and helping their consumers. For example, in I.R. of Iran, governmental bodies normally buy cereals from domestic producers to help them at harvest time when they are not able to sell their cereals at a fair price, and will sell to consumers at a low price.<sup>47</sup> In some cases, like that of wheat flour, the price for all public consumers is subsidised so that it is eight times under the present market price.<sup>48</sup> At the same time the government imports certain quantities from abroad to compensate national production shortfalls. In such situations, the states in developing countries have no other choice except to control procurement which directly relates to national food security. In addition, these countries resist any competition or intervention by foreign companies in their markets.

Industrial countries are against such practices and seek a choice of competition for their agencies in the developing world. The reality is that a majority of developing countries are not able to open their markets to foreign competitors. For many of these countries, opening up markets to competitions means a gradual elimination of their farming population.

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## **II. INTERNATIONAL AGRICULTURAL TRADE REGULATION; ITS RELEVANCE TO GATT AND DEVELOPING COUNTRIES.**

### **(A legal analysis)**

At the level of public international trade law, the GATT is the only world-wide agreement setting out general rules and procedures for the coordination and liberalization of the foreign trade policies and laws that currently cover more than 120 participating countries. At the national level, the domestic foreign trade laws of most GATT Contracting Parties are based on the international GATT rules.

#### ***A- THE ROLE OF INTERNATIONAL LAW***

A brief review of the role of international law and its relevance to international economic institutions will provide a better understanding of the global dimension of agricultural trade negotiations in the GATT system. It is also essential to question the relationship between international economic institutions, such as GATT, and their relevance to agricultural trade. What is the legal machinery on which international trade regulation depends? When answering these key questions, certain elements related to them must be examined. Starting with the role of international law, as the main source of international trade law and the GATT, one definition says contemporary international law is:

an instrument for resolving fundamental world problems. For achieving true equality amongst states and nations, for settling international disputes by peaceful means...<sup>49</sup>

It is possible to say that global and regional treaties, conventions, and international economic institutions, are legal instruments which fulfil such objectives.

They are supposed to pave the way for economic development for all members of the international community of states and peoples .

The emergence of institutions such as the United Nations Development Programme (UNDP) and various specialised agencies<sup>50</sup> with economic development as their principal objective, has introduced a new phenomenon in the law making process in international law. Although public international law does not usually influence discussions regarding what should be done in the international trading system, there is nonetheless a cardinal principle, namely the principle of '*pacta sunt servanda*', requiring adherence to international treaties and agreements, such as the GATT.

International law also plays a major role in dispute resolution, where law is taken into consideration in the avoidance of disputes and by aiming to prevent disputes through promoting international and bilateral conflict resolution by various means.<sup>51</sup>

### **(1) International Law as a framework for economic objectives**

Articles 55 and 56 of the Charter of the UN provide a legal framework for the development of international co-operation and collective economic security.<sup>52</sup> A question related thereto is whether all nations have the same share in decision-making in international relations or are the issues dominated also by political and economic factors.

Former Argentine president, Raul Alfonsin has stated that :

one of the characteristics of the present day is that international relations are increasingly relations among powers rather than relations among societies.<sup>53</sup>

It is clear that only a handful of industrially developed countries have an influence on major political and economic international decisions. Consequently many states are only observers of big power games in the international arena. In this respect, the ad-hoc working group of the United Nations ECOSOC decided that:

Economic and social progress in the world would be accelerated by the strengthening and development of economic relations amongst the states, irrespective of differences in the level of their economic and social systems.<sup>54</sup>

One may also add: irrespective of countries political and economic strength. Without co-operation on a non-discriminatory basis it is not possible to achieve prospective goals, or in other words:

International co-operation in the field of trade, finance and economic relations should aim in particular at the achievement of accelerated and self-sustained economic growth of developing countries and the progressive reduction and ultimate elimination of the gap existing between their economies and those of developed countries.<sup>55</sup>

Considering such a gap, sooner or later industrial countries should realise that their existing economic policies towards developing countries may not be fair, since their application not only fails to serve the weaker side, but in some cases exhibits actual negative results for the weaker partners.

### ***B-THE CONTRACTUAL BASIS OF GATT FOR REGULATING INTERNATIONAL TRADE.***

International trade between states requires a stable global economic and legal order based necessarily on norms of behaviour and rules accepted by all nations and administered as basic principles of international law.<sup>56</sup> One of the main foundations of such co-operation in the field of international economic relations, is the GATT multilateral trading system, within which most of the global merchandised trade moves today. GATT provides a system of basic rules as well as a forum in which member countries are able to consult and negotiate to resolve trade disputes and to clarify and develop the rules.<sup>57</sup>

The GATT is unique among international trade arrangements because it is a

quasi-contractual order and contains provisions governing non-compliance and the settlement of disputes. In comparison, other institutions or agreements dealing with trade, such as international commodity agreements, may contain obligations and legal rights not applicable to trade generally. Others, such as those drawn up under the auspices of UNCTAD and the OECD, are general in nature but contain no legally binding clauses nor a basis for ensuring enforcement.<sup>58</sup> As such they do not yield any proper guidance on agricultural trade. They focus mainly on a system of managed trade rather than one based on a regulatory and continuous framework.

The General Agreement on Tariffs and Trade, as its name indicates, is an agreement general in its nature and specific in its application. It comprises a set of rules and disciplines for general application to a broad range of goods entering world trade. The GATT contains general rules to be applied to all trade activities, such as rules for *'national treatment of other contracting parties goods'* and specific rules with respect to the use of policy instruments that affect international trade. For example, the rules that prohibit the use of quantitative import restrictions are applied, with certain exceptions, to agricultural products.

### ***C- THE IMPORTANCE OF AGRICULTURAL TRADE AND FOOD PRODUCTION IN THE WORLD.***

Before examining the GATT and its agricultural trade regime, it is possible to evaluate the place of agricultural products and food commodities in overall world production and the economic environment within which trade in agricultural products plays a major part. Such an evaluation can enable us to understand the important and crucial role of agricultural trade in the contemporary world and the legal rules underlying it.

Trade in agricultural products is not a new phenomenon. It has its roots in the first stages of human civilisation. The first signs of trade possibly started with the exchange of surplus farm and hunting products.<sup>59</sup> The '*Great Silk Road*' was a significant trade link in ancient times trading silk (if we treat silk as an agricultural product)<sup>60</sup> and other textiles and spices between China, Central Asia and the Middle East and Mediterranean region. Such trade dealt not only with the exchange of goods, but also led to exchanges of cultures and civilisations.<sup>61</sup>

In economic terms, since World War II, world trade in agricultural products has been declining as a proportion of world merchandise trade, but it remains substantial, amounting to a value of more than \$300 billion in 1990. It is of vital importance both for exporters and importers dependent on it.<sup>62</sup> A major share of agricultural trade relates to food products (used for human consumption), accounting for about three quarters of all agricultural trade; the rest is devoted to agricultural raw materials normally converted into industrial goods, such as cotton .

Production, preparation and trade in agricultural products are of vital importance in employment and other economic factors underlying the GNP in both industrial as well as developing countries. The following table shows the importance of agricultural exports to developing countries in various production groups.

**Table NO. 1**

**Share of developing countries in world agricultural exports, by product group, 1970-1989.**  
(Percentage)

Product Group	1970	1980-1982	1989
Cereals	15.6	13.7	11.7
Meat	20.3	14.2	11.6
Edible Oils	34.7	43.7	47.5
Dairy Products	2.1	2.0	2.4
Sugar	68.2	60.7	52.2
Tropical Beverage	91.2	84.7	78.4
Spices	85.6	81.6	72.4
Tobacco	25.4	27.9	24.7
Roots Tubers	32.9	42.7	41.9
Fruits	33.3	36.7	38.6
Vegetables	29.7	30.3	25.2
Total Agriculture *	35.6	29.4	25.9

\* Excluding fishery and forestry products.

**Source: FAO, Trade Yearbook UNCTAD secretariat calculations**

It was estimated that in 1988 agriculture accounted for only around 2% of the gross domestic product of industrial countries, whereas in the same year it accounted for about 15% in developing countries as a whole. In terms of employment, agriculture's share in the labour force is generally much greater than its share of GNP (Gross National Product). In developing countries it was nearly 60% of the labour force with income derived from different agricultural activities in 1989. In comparison, the corresponding share of developed market economies was only 6%.

## ***D-DEPENDENCE OF THE THIRD WORLD ON PRIMARY COMMODITY EXPORTS.***

As indicated in the last section, third world countries have a vital interest in agricultural commodities exports. This dependence makes them more susceptible to the results of the GATT and any other international agricultural trading negotiations.

The developing countries have different trade positions. Those who are able to convert agricultural raw materials into processed and semi-processed goods benefit more than those who are simply exporting agricultural raw materials.<sup>63</sup> In addition there are different effective elements for presenting merchandise goods in the contemporary world such as packaging, trade mark, complying with standards and the application of sanitary and phyto-sanitary in the production line.

Agricultural trade has played a substantial part in the historical development of the third world countries in Africa, Asia, the Middle East and Latin America. Primary product exports have traditionally accounted for a sizeable proportion of individual gross national products. In some smaller countries, anywhere from 25% to 40% of the monetary GNP is derived from the overseas sale of agricultural and other primary commodities such as coffee, cotton, cocoa, sugar, palm oil, etc.. Consequently, the participation of third world countries in the negotiations on trade in agricultural products is a direct result and a reflection of their interests in agricultural trade. In this respect four different categories of countries can be distinguished. i)- net exporters, ii)- net importers, iii)- those which are basically self-sufficient, and lastly, iv)- those occasionally and marginally involved, as either exporters or importers, in agricultural trade.

A brief examination of available data and information relating to the third world



and its problems yields a better understanding of the political, social, and economic situation of third world countries, with respect to which law has an important role to play. If we consider the degree of developing countries dependence on foreign trade earnings and the scarcity of hard currency resources, we find that there might be good reasons to invoke a special and differential treatment for these countries.

In many international trade treaties and conventions, especially in the GATT system, developing countries are given differential treatment in their exports,<sup>64</sup> but in practice the recent figures indicate that, in spite of such differential treatment, the trend of progress for agricultural exports has been negative.<sup>65</sup>

How is it possible to explain and justify such a downward trend ? The answer lies in the relatively high structural dependence of developing countries on agricultural production, ultimately translating itself into a high dependence on agricultural exports based on the only available national products. As a result, the share of agricultural products from developing countries in their total merchandise exports ranges from 50% to 100%.<sup>66</sup>

In comparison in industrially developed countries this share varies from 60% for New Zealand and 35% for Australia to more than 20% for the EC, 13% for the USA and 5% for Japan and all non-EC European countries.

TABLE-2

SHARE OF AGRICULTURE IN PRODUCTION AND LABOUR FORCE IN SELECTED  
REGIONS. (percentage)

REGION	SHARE IN GNP 1965	SHARE IN GNP 1988	TOTAL SHARE IN LABOUR FORCE 1965	TOTAL SHARE IN LABOUR FORCE 1989
Developed market-economy countries	5.5	2.3	16.5	5.9
Developing countries	28.4	15.4	70.6	57.1
Africa	35.3	20.8	78.9	66.5
Sub-Saharan Africa	41.0	34.0	—	—
Latin America	15.7	9.2	44.5	27.0
Asia	38.0	17.8	67.5	55.0
East Asia	41.0	22.0	—	—
South Asia	44.0	33.0	—	—

Source: GNP: UNCTAD, Handbook of International Trade and Development statistics, 1990, New York, 1991; labour force: FAO, Agrostat files. Data for subregions of Africa and Asia are from World Bank, World Development Report, 1990 (New York, Oxford University Press, 1990).

We must bear in mind that in addition to national policies, market access, geographical advantages, labour skill and technology advantages, others factors including the law, play a direct role in overall agricultural production in different countries. No nation is able to establish an advanced economy without relying on a secure and reliable trade policy based on a legal framework.

Developing countries have thus far been substantial losers in the world market share as a result of protectionist measures and other barriers to their trade applied by industrialised countries, especially with regard to such products as meat, cereals, sugar, tropical beverages, spices and vegetables. This is a direct reflection of the import policies of industrial countries, since the share of industrialised countries' agricultural imports has shown a general decline in the 1970s and 1980s, while developing countries have had an increase of domestic demand because of rapid population increase. Industrial countries became more self sufficient and developing countries became more dependent on agricultural imports. This contributes to the imbalance against third world countries. For example figures for 1989 indicate that gross food imports of developing countries rose to around \$62 billion, with their net food imports attaining the unprecedented level of about \$17 billion. These figures are reflected in table three. The food imports of all net food-importing developing countries totalled nearly \$36 billion while those of low-income food-deficit countries totalled around \$10 billion.<sup>67</sup>

**TABLE No. 3**  
**AGGREGATE FOOD<sup>68</sup> TRADE OF DEVELOPING COUNTRIES, 1989**  
(Million of dollars)

Countries	Imports	Exports	Net imports
Developing countries (132)	61630	44937	16694
Net exporters (28)	12550	31407	-18857
Net importers (104)	49080	13530	35550
Low-income food deficit countries(69) <sup>69</sup>	19734	9779	9955
World	216202	-	-

Source: FAO, Agrostat files and UNCTAD secretariat calculations.

In the contemporary world, developing countries are sensitive to any change in their agricultural trading patterns. Consequently, the results of GATT and other international trade negotiations will particularly affect them. Owing to the use of protectionist measures by industrial countries, the agricultural trade of developing countries has suffered considerable losses. This trend will not be redressed unless industrial countries grant favourable and differential treatment in agricultural trade to developing countries. In addition to reducing the level of tariffs for developing countries, every effort should be made to deal with other protective measures such as non-tariff barriers. These may be raised as new measures to replace the previous high tariffs applied by industrial countries.

It is also apparent that developing countries who are mainly dependent on agricultural products are substantial losers in the world market share as a result of protectionist measures and other barriers to their trade. These measures have been applied mainly by industrialised countries with regard to certain products such as meat, cereals, sugar, tropical beverages, spices and vegetables.

### **III. SALIENT FEATURES AND HISTORICAL BACKGROUND OF INTERNATIONAL TREATIES OTHER THAN GATT AS POSSIBLE LEGAL MODELS FOR TRADE IN AGRICULTURAL PRODUCTS.**

This section surveys major international attempts to regulate trade in agricultural products outside the GATT framework, at bilateral, regional and international levels. It does so firstly, to emphasise that the GATT in its nature is a general agreement dealing with many issues as well as with agricultural products, and thus particular treatment in favour of agricultural products or their producers, could not be expected. Perhaps those countries who have more competitive advantages will benefit more than others. In comparison there are other specific treaties or special agencies, established to tackle agricultural trade problems in a more specific manner, containing provisions for co-operation or assistance to developing countries. The second reason is to assess the comparable effect of such international entities on agricultural trade performance of developing countries as apposed to the overall GATT system.

For example the EC, the world's largest trading block, has its own Common Agricultural Policy (CAP) developed since 1962 on an elaborate legal base. It is not possible to have a proper and extensive survey of the GATT and the world agricultural trade policies without understanding how CAP operates. The EC legislation on CAP has a direct effect on GATT decisions and vice-versa. Other international attempts to regulate agricultural trade also have their own importance. A brief review of such international and regional agreements can help to assess the significance of GATT in its institutional environment, especially in respect of directly or indirectly comparable arrangements. Light may also be cast on future changes that might be envisaged in the structure and processes of the GATT as far as agricultural trade is concerned.

### ***A- INTERNATIONAL COMMODITY AGREEMENTS***

One of the traditional ways to manage agricultural trade outside GATT has been, and still is, to negotiate particular international commodity agreements. They typically cover trade performance, marketing, price, quantity, and the overall management of the commodity in question. On this basis the interested parties come together and decide the management of the market for products that they intend to share.

Agreements of this kind, to manage trade, are in essence agreements which limit competition among the participating states and give them a stronger voice against outside competitors.

International Commodity Agreements (ICAs), were made as long ago as 1903 with the International Sugar Agreement; but it was after the Second World War that commodity agreements proliferated.<sup>70</sup> ICAs for coffee, wheat, cocoa, olive oil and sugar were established, but failed to stabilize prices or solve the problems of developing countries' fluctuating export earnings.<sup>71</sup>

ICAs can be negotiated among just a few exporters or importers, or among all exporters or importers. The latter approach has been a preferred strategy for most ICAs proponents over the years.<sup>72</sup>

ICAs interfere with the philosophy of GATT, which is to allow the free play (function) of market forces; but they are not a serious obstacle to GATT. The GATT record in the agricultural area serves to indicate the extent to which agriculture forms an exception to the basic GATT philosophy.<sup>73</sup> In this respect there is a similarity between GATT and ICAs. But the main difference is that GATT encourages a multi-product and multinational approach rather than emphasising certain commodities or regional countries.<sup>74</sup> From a legal point of view Article XX of the GATT directly refers to ICAs, by stating :

Subject to the requirements that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same condition[s] prevail, or a disguised restriction on international trade, nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures :... (h) undertaken in pursuance of obligations under any *intergovernmental commodity agreement* which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved; <sup>75</sup>

It should be realised that in general terms ICAs are a system of managed trade rather than a regulated trading practice. Some industrial countries put forward ICAs in order to control the worlds' commodity markets in a harmonized way. The developing countries' approach was to seek more gains by collective decisions. A commodity agreement gives more power and a stronger voice to developing countries with respect to products of interest. In practice only a number of ICAs such as oil, sugar and coffee, have been the subject of successful negotiations aimed at securing agreements in the sense that they secured higher export earnings for developing countries.

### ***B- THE IDEA OF AN INTERNATIONAL TRADE ORGANISATION (ITO) AND HAVANA CHARTER***

The International Trade Organisation (ITO) was intended to be the fundamental basis of GATT, envisaged as a result of pre-and post-World War II experiences in international trade negotiations. It was the result of a convention in the early 1930's drafted to commit the signatories: "*to abolish within a period of six months all imports and export prohibitions or restrictions*". <sup>76</sup>

Some believe that the establishment of the ITO was envisaged as a result of the Allies' intention to establish a better international trading environment, when they

created the '*Charter of World Trade*'.<sup>77</sup> This charter called for the establishment of a better trading system and general liberalization of trade, with agricultural products treated like any other commodity, that is, with no special advantages or privileges attached to them.<sup>78</sup>

One positive feature of the intended ITO was the subsequent encouragement of individual commodity agreements between producers and consumer states to stabilize prices.<sup>79</sup> Any further attempts to create an international trade organization to operate on a global scale, includes particular reference to the realities that led to the failure of ITO.<sup>80</sup>

One of the main reasons for the failure of ITO was the lack of consideration of developing countries' interests. It was also apparent that USA policy, reflected in the original proposal for ITO, did not include more than a passing reference to economic development.<sup>81</sup> This position proved totally unacceptable to the least-developed world which sought affirmative commitments by all participating countries for advancing the process of their economic development. Most importantly, specific exceptions to many of the prohibitions of the ITO charter were sought to permit the less-developed countries to follow an independent commercial policy. This position created a division between the parties over the drafting of the Havana Charter.<sup>82</sup>

Ultimately, the GATT inherited only the specific exceptions to the commercial policy prohibitions of the Havana Charter.<sup>83</sup> With the collapse of the ITO, Chapter III of the Havana Charter, entitled '*Economic Development and Reconstruction*' stumbled, except for Article 13, which became Article XVIII of the GATT. This is evidence of the belief that the developing countries interests could no longer be neglected in an international trade regulatory system.

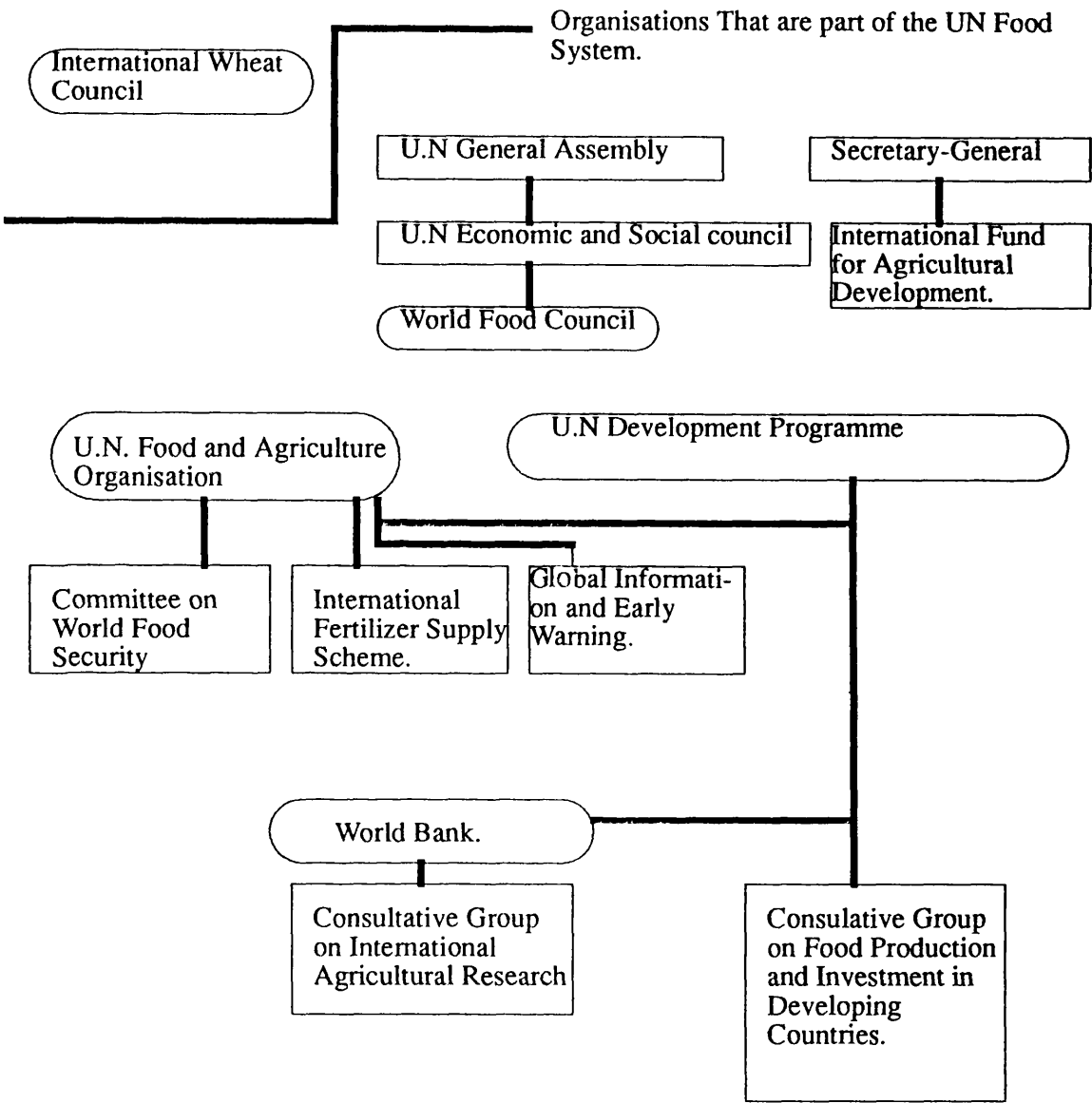


***C- THE UNITED NATIONS ROLE IN AGRICULTURAL TRADE.***

In examining agricultural trade in the GATT system, the role of the UN and its agencies as a major organisation influencing international economic and commercial policy making cannot be ignored. The legal justification for consideration of these organizations is Part IV, Article XXXVIII(2)(b) that calls for joint action of all contracting parties to proceed with development objectives as well as appropriate collaboration in the matter of trade and development policy with the UN and its agencies and other institutions recommended by UNCTAD.

The Charter of Economic Rights and Duties of States was one of the first collective attempts on the part of the UN for promoting international trade. It followed the UN call for a possible global agreement with a wide range of collective rules for the establishment of a new world economic system. The UN involvement in agriculture particularly focuses on food and agricultural development issues. Table Four represents a clear picture UN attempts and other intergovernmental bodies in the area of agriculture, specially on food sector and interlink between these agencies. A concise review of the attempts in three of them, relating to development and agricultural trade performance of developing countries, helps us in a search for an optimal perspective for agricultural trade.

Table NO. 4  
Major Intergovernmental bodies in the Agricultural and food field



Source: MacLaughlin Martin M., *World food Industry : Has anything Happened Since Rome?* Overseas Development Council, No. 27, 1975.

***(1) Food and Agricultural Organisation (FAO)***

As a specialised agency of the UN, FAO has as its main objective the promotion of international consultations and cooperation related to the production and export of agricultural commodities.<sup>84</sup> It was established as the result of a resolution adopted by the Bretton Woods 1944 conference calling for parallel action in other fields of international economic relations and broader primary objectives of economic policy such as:

- 1)- The reduction of obstacles to international trade and the promotion of mutually advantageous international commercial relations;
- 2)- Bringing about the orderly marketing of staple commodities at prices fair to the producer and consumer alike.<sup>85</sup>

The first session of FAO in Quebec (October-November 1945) adopted resolutions in which primary emphasis was placed on an expansion of agricultural production, and on raising the standards of nutrition and living throughout the world.<sup>86</sup> The formation of the FAO Intergovernmental Group on Meat that sets guidelines for international co-operation in the livestock and meat sector could be seen as a successful joint action of GATT and FAO in the area of agricultural commodities trade.<sup>87</sup> The group pointed to the need for special treatment for agricultural products in international trade and the development of a coordinated agricultural trade policy among the participating states. As one of the successful<sup>88</sup> UN agencies in the area of food and agriculture, FAO has attracted the membership of a substantial number of developing countries who have raised their voice for a more favourable development of agricultural trade and promotion of food policy amongst its members. It could also be considered as an prospective alternative to the GATT agricultural trade regime.

## **(2) The United Nation Conference on Trade and Development (UNCTAD)**

The UNCTAD conference, created as an organ of the General Assembly in 1964, had common goals and similarities with GATT in its attitudes towards developing countries.<sup>89</sup> UNCTAD has maintained its close involvement with agricultural trade through its *integrated programme for commodities* which was adopted at the Nairobi conference.<sup>90</sup> The Common Fund programme established by the *integrated programme for commodities* (that covers tropical and agricultural raw materials) is mainly related to development objectives that deserve its particular importance in the area of agricultural trade.

The UNCTAD programme of action deals with a wide range of industrial and raw materials, that agricultural products being considered as part of them, in addition of having development objectives. It aims to:

1. achieve stable conditions in commodity trade, including avoidance of excessive price fluctuations, at [certain] levels.<sup>91</sup>
2. improve and sustain the real income of individual developing countries through increased export earnings, and to protect them from fluctuations in export earnings, especially from commodities;
3. seek to improve market access and reliability of supply for primary and processed products, bearing in mind the needs and interests of developing countries;
4. diversify production in developing countries, including food production, and to expand processing of primary products in developing countries with a view to promote their industrialisation and increase their export earnings;
5. improve competitiveness, and to encourage research and development on the problems of national products competing with synthetics and substitutes, and to consider where appropriate the harmonisation of the production of synthetics and substitutes in developed countries with the supply of natural products produced in developing countries;
6. improve market structures in the field of raw materials and commodities of export interest to developing countries;
7. improve marketing, distribution and transport, and increase developing countries' participation in such activities and earnings from them.<sup>92</sup>

The UNCTAD programme of action has tried to touch some genuine trade problems affecting developing countries, among them barriers to trade in agricultural products and other commodities. Side issues such as processing of raw materials, transport, distribution and marketing in products of interest to developing countries are also taken into consideration.

From a legal point of view, Article XXXVIII(2)(b) of the GATT could be regarded as a basis for joint action between the UNCTAD and GATT.<sup>93</sup> All the above cited development objectives of UNCTAD, especially the participation of a substantial number of developing countries, could influence the decision making process in the GATT system. A practical sign for this in the past has been the inclusion of part IV in the GATT in 1965, entitled '*trade and development*' in favour of developing countries. This has largely been considered to be a reaction to the UNCTAD I suggestions in 1964.<sup>94</sup> The other successful joint action has been the establishment of the International Trade Centre (ITC).

### **(3) *The links between GATT, IMF and the World Bank (IBRD)***

The IMF too could play an important role in trade in agricultural and other commodities. One of the main purposes of trade in agriculture and other commodities is to provide a reasonable and regular income for developing countries whose economies are heavily dependent on export of such products. Where an arrangement fails to provide such a regular income in this respect or does not exist, the IMF helps to secure additional protection to enable the loser countries to draw from the IMF compensatory financing facility to meet temporary shortfalls in export earnings.<sup>95</sup>

The IBRD could play an active role in this regard. But despite the importance of maintaining close relations between GATT, IMF and the IBRD, such co-ordination has received less attention. Essentially, the negotiating objective in this area is to ensure the

consistency and compatibility of the three organizations in their respective efforts on trade, monetary, and development issues.<sup>96</sup>

There were some new initiatives in the latest GATT Uruguay Round negotiations (1986-1993) to motivate the IMF system to allocate some funds to those developing countries who are trapped in the protectionist programmes of industrial countries, and whose economies have suffered as a result of cutting farm subsidies and liberalisation of world trade. This is also an area where the World Bank could contribute.<sup>97</sup>

#### ***D- THE TREATY OF ROME AND THE ESTABLISHMENT OF EC***

From the legal point of view the twelve EC states defined their legal status as united individual GATT contracting parties. However, since the Dillon Round, the EC Commission has participated as a GATT contracting party '*sui generis*' in all GATT committees except the Budget Committee.<sup>98</sup> It means that the EC exercises and represents almost all the rights and obligations of individual member states. Owing to the close relationship between GATT and EC as the worlds' largest trading bloc, the EC's arrangements with ACP, Mediterranean and some individual countries are of particular significance as typical trade and development models of relationships between North and South, especially in the area of agriculture and tropical products trade.

For example the Lome' conventions are comprehensive co-operation agreements between the EC and African Caribbean and Pacific (ACP) group of countries.<sup>99</sup> It was first signed in 1975 and renewed by three consecutive conventions, in 1979, 1984, and 1989. The fourth Lome' Convention (1990-2000) is currently in force.<sup>100</sup> These arrangements will be investigated further in connection to industrial and developing countries perspectives in the GATT on Chapter Four.<sup>101</sup>

***E- CONCLUDING REMARKS***

Trade in agricultural products has a multi functional dimension. Unlike other trade or commercial activities, from the early stage of human civilization it has been a circle that joined up many aspects of human economic and social life. Owing to different geographical, environmental and social differences in the world regions, it is not possible to prescribe the same identical regime for agricultural trade problems of all countries. Every individual region or nation has its own particular agricultural characteristics. In comparison to services and industrial products, and despite all technical advantages in these sectors, almost all nations of the world are dependent on agricultural products which they treat it differently from other sectors.

In the overall framework of the GATT, agricultural trade plays a vital part. It includes the main bulk of exports from developing countries. At the same time, in the industrialised world, it is an area of socio-economic survival for rural populations. Many developing countries are heavily dependent on internal supplies and export earnings from these commodities, but the degree of dependency varies from country to country and product to product. A clear definition and categorization of agricultural commodities will reduce the tension and disputes over these products in world markets.

With reference to international economic organizations, it is possible to suggest that the GATT Contracting Parties should continue to explore whether cooperative arrangements prescribed by such international institutions would be desirable for promoting better trading advantages than those presented by GATT. To this end, it seems necessary to include a range of cooperative dialogues in the GATT negotiations.

Commodity Agreements, are also of immense legal interest because they are multilateral treaty arrangements which seek to regulate aspects of international trade in some agricultural commodities, an area of great importance to developing countries. In

the words of Fawcett, "international commodity agreements are instruments of trade regulation and, as such, a form of international organisation law can be seen at work in them in both aspects..."<sup>102</sup>

ICAs could still be treated as a strong alternative to the GATT agricultural trading regime for developing countries. The main advantage of the commodity approach is that industrial countries not producing the same commodities are not able to interfere in the market with their usual policy instruments, whereas in a system like GATT the developing countries have no choice except to share their gains with those who have stronger trading capacities.

The ITO discussion became once more significant when in the final text of the Uruguay Round agreement, the establishment of a global World Trade Organisation (WTO) came under practical consideration. Considering the lack of an active participation of developing countries in its early years, perhaps it is desirable that in any future negotiations establishing a global trade regulatory system, the developing countries must participate more actively. It is only under these circumstances that they may secure a better consideration of their overall interests. It is possible to assume that if any future international arrangement ignores the reality of the third world's interests, it will not be able to attract the full cooperation of all nations.

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## NOTES TO THE CHAPTER

1. Rubin Seymour J. and Mark L. Jones, *'Conflict and Resolution in US-EC Trade Relations at the Opening of the Uruguay Round,'* Oceana Publications, New York, London, (1989), p.8.
2. GATT, BISD, 29th Sup. Geneva, (1982-83) pp.42-46 .
3. See Ibid: (Terms of reference).
4. Ibid.
5. For more information, see GATT, BISD, 30th Sup. Geneva, (1982-83), pp.39-43.
6. Ibid.
7. In the section related to agricultural products definitions, there will be more references to these products.
8. For ease of reference the term EC is used though this thesis to refer to the former EEC and European Community or present European Union.
9. Two leading cases relevant to this subject in the European Court of Justice were: Case 61/77, *Commission v. Ireland*, [1987] ECR 417, and Case 141/78, *France v. United Kingdom*, [1979] ECR 2923.
10. The Council was also empowered to decide what products should be added to this list within two years of the entry into force of the EC Treaty (until end of December 1959).
11. Agricultural products are listed in Annex II to the Treaty as amended by Regulation 7a, See Appendix. See also J. Usher, *Uniform External Protection: EC Customs Legislation before the European Court of Justice* (1982) CML Rev. 389.
12. See Protocol No.4 to the *'Greek Act of Accession to the EC'* in 1981, OJ 1981 L211/2.
13. At the beginning of January 1988 both the statistical nomenclature NIMEXE and the tariff nomenclature CCT were replaced by the Combined Nomenclature (CN), which is based on the Harmonised System as defined by the Customs Cooperation Council. The Combined Nomenclature is published annually in the Official Community Journal. It consists of around 16,000 codes at the 2, 4, 6, and 8-digit levels, and for each code there is a descriptive text in each of the 9 official Community languages.
14. OJ 1987 L 198/1. The new text of the Common Customs Tariff is contained in Council Reg. 2658/87(OJ 1987 L256/1).
15. Reference may be made when interpreting Annex II to the Explanatory Notes to the 1950 *Customs Cooperation Council Convention*, see Case 61/80, *Coöperatieve Stremsel-en-Kleureselfabriek V. Commission*. [1981] ECR 851.
16. See J. Usher, *Supra* No. 11.
17. [1984] ECR 1257.
18. Cited in Usher, *Supra*. note 11.

19. This is based on my own practical experiences in the carpet industry, taking into account all elements of preparing the raw wool for commercial use. Reference to my own written textbook on: '*The Art of Making Persian Carpets*' in Persian, 2th ed. Ministry of Education, Classification 219/5, I.R. Iran, Tehran, (1989).

20. See *United States Code Service*, No. 19, 1677, Lawyers Cooperative Publishing, (1992).

21. For the purposes of this sub paragraph, the term '*raw agricultural product*' means any form of farm or fishery product.

22. In general the term '*industry*' here means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product...., the term also means the domestic producers of the principle raw agricultural product which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grapes products.

23. The term '*Commission*' here means the US International Trade Commission.

24. For the purpose of clause (i) (II) in addition to such other factors, there may also be considered eventually to the question of coincidence of economic interest. The US Trade Commission shall:

(I) if price is taken into account to consider the degree of correlation between the price of the raw agricultural product and the price of the primary agricultural product; and "(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product"

25. The above-cited provisions of the General Agreement were among those reviewed by the Negotiating Group on Agriculture, as part of its mandate to achieve greater liberalisation of trade in agricultural products.

26. Op cit in note 3.

27. Article XVI:4 relates to the ban on export subsidies of non-primary products.

28. It also remained to be decided whether this practice should be eliminated or made subject to reduction commitments in itself or in conjunction with reduction commitments on internal support.

29. For examples of products falling under the Common Customs Tariff and Common Commercial Policy see Cases 37 and 38/73, *Social Fonds voor de Diamantarbeiders v. Indiamex*, [1973], ECR 1609.

30. The US, in its proposal to the GATT included many other products such as casein, skins, wood and cotton in its definition, and excluded manufactured tobacco. See UN, Uruguay Round, Further Papers on Selected Issues, prepared by UNCTAD/ITP/42, Geneva, 1990, at P.7.

31. See GATT International Trade Yearbook, 88-89 Geneva, Vol. 1, Appendix I, (1989), p.46.

32. For more detailed categorisation of agricultural products see "Expert Series" on 10 different series. See Dr. Hessayon D.G '*The Vegetable Expert*' published by pbi Publications, England (1990). This book is in 10 volumes covering 10 categories of agricultural products such as Vegetables, Fruit, Flower etc.

33. In my search for a proper definition and categorisation of agricultural products I came across the book which categorises the main food products on a scientific and logical basis: Ellwood Caroline, Rosemary Wadey Hamlyn: *'Nature of Fruits and Vegetables Course,'* Hong Kong, (1990), pp.20-21 and 230-232. It is not possible to list all the agricultural products in the present thesis.

34. See supra note 32.

35. Supra No.33. For example, fruits are divided as follows : (1) apples, (2) apricots, (3)bananas, (4) blackberries, (5) blackcurrants, (6)cherries, (7) crap apples, (8)coconuts, (9)dates, (10)figs, (11)gooseberries (12) grapefruit (13)grapes (14) kiwi fruit (Chinese gooseberries) (15)lemons, (16)limes, (17)loganberries,(18)mangoes (19)melons, (20)nectarines, (21) oranges, (22) peaches, (23) pears, (24) persimmons (25) pineapples, (26) pomegranates, (27) quinces, (28) raspberries (29) redcurrants (30) rhubarb (31) satsumas (32) strawberries (33) tangerines (34) watermelons.

36. Op.cit. No. 33, pp. 20-21.

37. Supra No 33, pp.22-23.

38. Ibid, pp. 166-169.

39. Supra No 33, p.192.

40. See The Agricultural Situation in the Community, 1992 Report, Commission of the European Communities, Brussels (1993), p. 61.

41. In 1982, acting as a civil servant for creating job opportunities in Iran, I visited the Persian Gulf region. At the time, along the whole one thousand and six hundred kilometres of the Iranian coastal line, there were only a few places near major cities that the fishing community were able to store their catches in a cool place or were able to buy blocks of ice to keep their catches cool for more than a few hours. It means that most fishermen work on a daily basis and for the supply of the local communities. In recent years there has been a substantial investment in these areas to help the fishing communities. This is an example repeated in many developing countries which despite having enough labour and natural resources are not able to exploit available resources without proper investment and development plans.

42. It was noted again during my visits in 1981, in farmlands near the central city of Esphahan that, because of low market prices, expensive transport costs and inadequate road system, most of the high quality horticultural products and water melons were not collected by farmers whereas the use or employment of modern techniques such as canning, drying, concentrating and freezing systems could improve the developing countries farm and horticultural productions.

43. See Commission of the European Communities, *"The Agricultural Situation in the Community*, 1992 Report, Brussels (1993), p. 65.

44. European Communities Information papers, *Draft European Communities proposal for multilateral trade negotiations on agriculture in Uruguay Round:* Brussels, P(87)64, (6 Oct.1987), p.2.

45. For an analytical discussion of the impact of domestic price objectives on market structure, see Josling, T. E. *Government Price Policies and the Structure of International Agricultural Trade,* Journal of Agricultural Economics, (1978) p.140.

46. Countries using such agencies range from Japan to China, India and Canada to Australia.

47. Such practices by the government act as a short loan and a guarantee for farmers to sell their products at a fair price, and free of any dealer intervention.
48. 'Jahade' *Agricultural and Rural Development Monthly periodical*, Tehran, I.R.of Iran (in Persian) No. 136, and No.141, year11, p.40.
49. Bulajic, *Malin Principles of International Development Law*, Martins Nijhoff , (1986), p. 44.
50. See United Nations Repertory of Practice of United Nations Organs, New York (1952) Vol III pp. 7-118, sup. No 1 (1958) pp. 5-56; and sup. No.2 (1963) pp. 5-56.
51. See more in: Harvey E. Bale, Jr. *The GATT and the Uruguay Round of Multilateral Trade Negotiations: The US Perspective*, in Chap 4, Rubin Seymour J. and Jones Mark L. (ds.), *Conflict and Resolution in EC-US trade relation in the beginning of Uruguay Round*, Oceana Publications, INC. New York, London, (1989). p.32.
52. See Dr. K.U.R. Khan, *The Law and Organizations of International Commodity Agreements*, Martinus Nijhoff, (1982).
53. Supra No.49, at Page 44.
54. According to M. Bulajic, (ibid) the group based its formulation of this text on Article I of document E/3467, taking in account oral suggestions as well as certain changes proposed in paragraph 8 of the document E/L.937 and in operative paragraph 1 of document E/AC. 50/L.1.
55. Ibid: It was indicated that the formulation of this part of the text resulted from two proposals to insert paragraphs before or after article 2 of document E/3467-by Columbia (E/AC.50/L.2) and jointly by Brazil, India and [ex] Yugoslavia (E/AC.50/L.3).
56. The fifth conference of heads of states of non-aligned countries in Colombo in 1976, the Sri.Lankan Prime Minister, Sirmano Bandranaike.
57. See Leutwiler, Frits, *Trade Policies for a better Future* , The '*Leutwiler Report*' , the GATT and the Uruguay Round, Martinus Nijhoff, (1987), p 44.
58. See more in: Tangermann Stefan and William Miner, *Negotiating Stronger GATT rules for agricultural trade, 1989*, Discussion papers series, International Policy Council on Agricultural Trade, Cobham Surrey, No.3 Washington, DC. p.1.
59. The old tradition of exchange of surplus products especially grains such as wheat is a popular practice in many parts of the third world. For a comprehensive review of agricultural trade developments see: Norman Myers, *General Editor 'The GAIA Atlas of Planet Management'*, in Reed, C.A.(ed.) : *Origins of Agriculture*, Mouton Publishers, UK (1977) .
60. It is possible to assume that the raw silk is considered as an agricultural product, whereas the yarn or finished cloth are considered to be industrial products.
61. By the fourth century B.C. Greek agriculture and its administration were treated as a fine art. It is assumed that in the world of Greek and Roman colonisation and supremacy, agricultural products and ideas were exchanged through out the widespread region of their influence and beyond it through intermediate traders. Perhaps the whole past history of mankind has witnessed numerous agricultural trade agreements.

62. If fishery and forestry products were included, the total figure for 1990 would be about \$419 billion. It should be noted that since the Second World War, the value of world trade in agricultural products has not declined in absolute terms, but its growth has been much slower than of world trade in other products.

63. It is mainly due to the cheap labour and other packaging and administration costs in developing countries.

64. For example, in the '*Ministerial Declaration*' launching the Uruguay Round negotiations, it was agreed that the principle objective of negotiations was to '*bring about future liberalization and expansion of world trade to the benefit of all countries, especially less developed contracting parties*'.

65. For more information, see K.Anderson and Tyers, '*Liberalizing OECD agricultural policies in the Uruguay Round, Effects on trade and welfare*'. Journal of Agricultural Economics, 39 May 1988, p.2.

66. For more information, see UNCTAD, "*Agricultural trade expansion and protectionism, with special reference to products of export interest to developing countries*" ( TD/B/C.1/239 ).

67. '*Food*' is defined by FAO to include all products which are considered edible and contain nutrients in their raw or processed forms. For the present purpose the following commodities have been excluded from the definition: cocoa beans and products and other tropical beverages, fish and fishery products, feeding stuffs, alcoholic beverages, tropical fruits and spices and live animals.

68. In the UNCTAD study, the following commodities have been excluded from the definition ( In their raw or processed forms.): cocoa beans and products and other tropical beverages, fish and fishery products, feeding stuffs, alcoholic beverages, tropical fruits and spices and live animals.

69. Low-income food-deficit countries; defined by FAO as those food- deficit countries with per capita GNP less than \$ 940 (in 1987 prices), which is the cut-off level for eligibility for IDA assistance.

70. Brown, W.A.,The United States and the Restoration of World Trade, Brookings, Faber, (1950).

71. See K.R.Khan, op. cite in note 52.

72. There are a number of such agreements such as; Wheat, Sugar, Coffee,etc. For more information See more in. K.R. Khan, Ibid No 52, and Chimni, B,S, International Commodity Agreements: A Legal Study, London, 1987.

73.For a proper analysis of International Commodity Agreements See K.R.Khan, Supra No 52. For Wheat Agreements See: Ali L '*The World Wheat Market and International Agreements*' (1982) JWTL No. 16 p, 59.

74.We need to consider that not all commodity agreements have a regional nature. For example the major oil producers are in the Middle East, but it does not prevent them to come to agreement with Central American and other trading nations. The same pattern exists for many agricultural agreements that are not concluded on a regional base, but a global approach which is most effective.

75. The interpretive notes related to this Article states that the exception, mainly relates to any commodity agreement which conforms to the principles approved by ECOSOC Resolution No. 30 (IV). See more details in GATT, BISD, Vol. No. IV , (1969), PP.37-38.

76. See League of Nations, Commercial Policy in the Interwar Period, No. E805; 1935.II.B.1 pp. 33-34

77. See, US Department of State publication, No.2598, Commercial Policy Series No. 93 (1946), P.111.

78. Agricultural commodities may be counted as economically insignificant for industrial countries at the time, in comparison to their industrial exports. It is why they supported the non-discriminatory attitude of the ITO draft proposal regarding agricultural products.

79. Lister, Marjorie, *The European Countries and the Developing World*, The Role of the Lomé Convention. University of York publication, (1988), p. 77.

80. In the Final Uruguay Round Agreement the establishment of a new World Trade Organization (WTO) was adapted. For more details on WTO, see Chapter five, Section five.

81. The reason is the US believed the less developed countries could best develop by participating fully in a multilateral and non-discriminatory system with no particular privileges and the lowest possible level of tariffs and no quantitative restrictions.

82. For a complete examination of these conflicts and the reasons that led to the failure of the ITO, see Brown W.A., Jr, *The United States and the Restoration of World Trade*, Brookings, Faber, Washington, (1950).

83. It was drafted at the Havana conference for developing countries (27 Nov. 1947-March 24 1948).

84. The UN Interim Commission on Food and Agriculture was set up in July 1943. It completed the draft constitution for a permanent organisation. The draft was submitted to governments in a first report in August 1944. It led to the establishment of the Bretton Woods Conference which adopted a resolution for early FAO commercial policy. See Infra No 86.

85. For the texts of resolutions adopted by the Bretton Woods Conference, see John Park Young, '*Conference at Bretton Woods Prepares for International Finance*' US Department of State. Bulletin, Vol.1. pp.937-42.

86. For more information see: US Department of Agriculture, '*A post War Foreign Trade Policy Program for American Agriculture*' (1945), p.15.

87. FAO publications, Doc.:MF 80/5,(1980), APP, and FAO publications, *New Protectionism and attempt at Liberalisation in Agricultural Trade*, (1983), p.46.

88. In the early years, the FAO set up active commodity groups for tackling commodity problems in developing countries, such as: Hard Fibres; Jute, Kenaf and Allied Fibres; Rice; Meat; Oilseeds, Oils and Fats.

89. In respect of legal power there is a similarity with the GATT, as the UNCTAD too is unable to alter the rules of international trade applicable to its members, it could only recommend particular solutions to member countries. Its role in shaping international trade regulation, however, especially in commodities agreements, cannot be ignored.

90. Resolution 1995 XIX: in (1947-48) Yearbook of the UN P.979; UN Resolutions, Ser. No. I, Vol. X p.71

91. These levels are: a) to be remunerative and just to producers and equitable to consumers; b) take account of world inflation and changes in the world economic and monetary situations; c) promote equilibrium between supply and demand within expanding world commodity trade.

92. See *ibid.*

93. It states that GATT may "(b) seek appropriate collaboration in matters of trade and development policy with the UN and its organs and agencies, including any institutions that may be created on the basis of recommendations by the UN Conference on Trade and Development; "

94. Walley, John: *Special and Differential Treatment, Agriculture, and the Developing Countries in the Uruguay Round*. In Nurul Islam Alberto Valdes etc., *The GATT and the Developing Countries*, International Food Policy Research Institute, Washington, (Sep. 1990),

95. MacGovern, Edmond, *International Trade Regulation*, GATT, The United States and European Community, Exeter, Globefield Press, (1986), p.15.1.

96. Some refer to these as trade-finance linkage that is not possible to elaborate here.

97. A full examination of the role of IMF and World Bank may be found in: Ahmed Aoued, 'The Impact of the World Bank on Legal and Institutional Change in Developing Countries' Ph.D. Thesis 1992, Glasgow University.

98. The reason for non-participation of the EC in the Budget Committee of the GATT is that the budgetary contributions to GATT are continued to be paid by the individual EC member states out of their national budgets.

99. See BISD 6 th Sup. PP.70- 90.

100. Preamble of the Lome' Convention EC, OJ 1976, L 25/2, 5. states that it will: '*establish a new model for relations between developed and developing states compatible with the aspirations of the international community towards a more just and balanced economic order.*

101. Owing to the complexity and numerous aspects of these trading arrangements on one hand and my obligation to focus to the issues relevant to the topic on the other, all dimensions of these trading arrangements are not included in this Chapter.

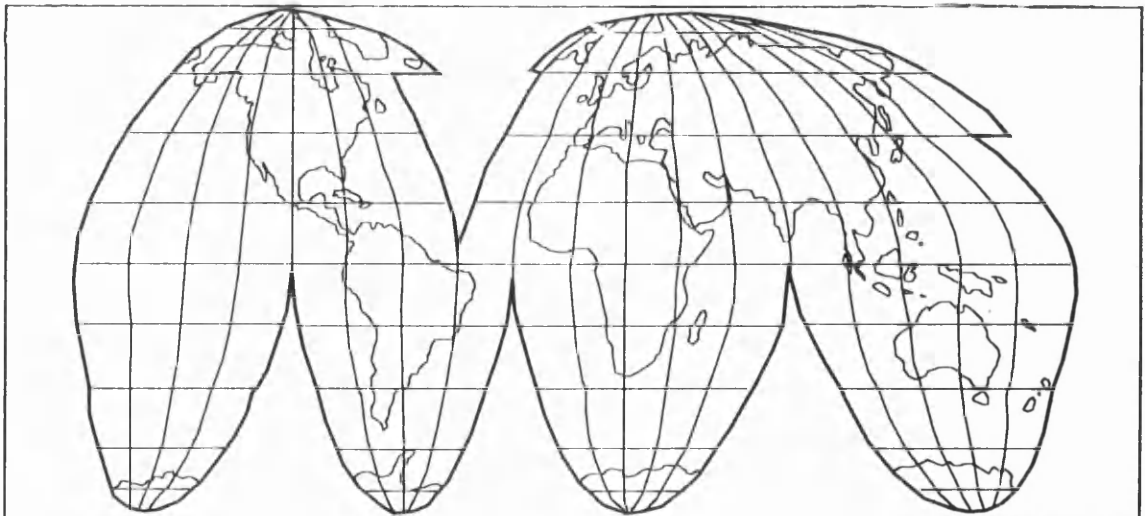
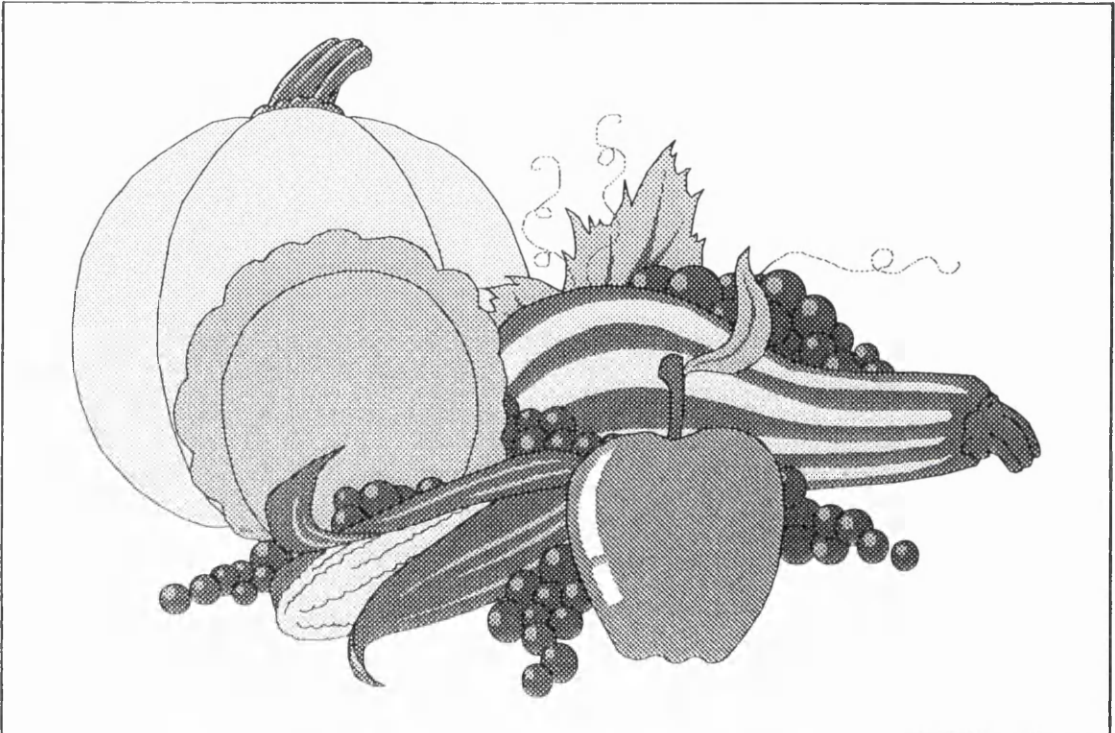
102. Fawcett, J.E.S. '*The Function of law in International Commodity Agreements*', British yearbook of International law, vol.54 (1971), p.157.

## CHAPTER TWO

### THE GATT AGRICULTURAL TRADE REGIME :

THE RELEVANCE OF ITS PROCEDURAL AND SUBSTANTIVE RULES TO  
THE AGRICULTURAL TRADE OF DEVELOPING COUNTRIES.

(GATT as a legal instrument)





## Introduction

**"Perhaps the most difficult question to determine is how much to decide by rule and how much to leave to discretion." "It is an advantage, and not a disadvantage, of the scheme that it invites the member states to abandon that licence to promote indiscipline, disorder and bad-neighbourliness which, to the general disadvantage, they have been free to exercise hitherto".**

**John Maynard Keynes<sup>1</sup>**

Chapter two aims to provide a fuller examination of the GATT structure and its procedural and substantive rules relating to agricultural trade and the developing countries' interests in the system. Owing to the fact that such rules are not concentrated in a specific part or section of the General Agreement, a proper coverage of them is a very difficult task. In addition, there are certain multi-dimension rules that are not directly related to development or agricultural trade issues yet have a multi functional coverage, for example, rules on subsidies and border protection.

A clear idea of the legal nature of the system, its operation and its institutional framework gives perspective to decide which new initiative or decision in the multilateral trade negotiation is well or badly taken. Knowledge of the system will help to analyze the relations between different groups and clarify the enforceability and applicability of contracting parties decisions. This information gives indicators as to the possibility for altering the rules and determinations and identifies who has the decision-making authority in the system. Thus one can address to what extent developing countries can participate in decision making mechanisms, seeking a more favourable treatment for themselves in the decision making authority of the GATT.

# **I. THE PRINCIPLES, SCOPE, INSTITUTIONS AND FUNCTIONS OF THE GATT AS THEY RELATE TO DEVELOPING COUNTRIES' AGRICULTURAL TRADE.**

## ***A- THE PRINCIPLES***

The cardinal principles laid down in the preamble of the GATT are reflected in different articles such as: non-discrimination subject of Articles I, III, XIII, XVII, and transparent policy making by means of tariffs (Articles II, X), market access (XI:1), public choice of the least-distortive trade policy instruments (Articles III, XI:1, XIII, XVI), undistorted rule-oriented competition (Articles VI, XVI:B) and judicial review (subject of Article X:3).<sup>2</sup> Some of these articles are of particular importance to the present thesis. For example Article I embodies unconditional MFN treatment. It applies in respect of custom duties and other legislation for importation and exportation of goods,<sup>3</sup> This principle obliges the contracting parties to accord unconditional and non-discriminatory treatment to their respective products.

It must be realised that in the GATT, apart from the above principle, Article XXVIII bis also refers to the conduct of '*negotiations on a reciprocal and mutually advantageous basis*'. This principle is hardly mentioned in connection with the GATT. In reality reciprocity plays a role not only in the multilateral negotiating rounds to which Article XXVIII bis applies, but in every situation where a balance of interests of contracting parties is involved.<sup>4</sup> It is also possible to conclude that reciprocity and unconditional MFN are the basis of many controversial discussions in the GATT especially as regards relations between industrial and developing countries.

Article II also serves as the central obligation in the negotiating rounds. The same Article indicates that the developing countries should receive special treatment. This is considered as another cardinal principle that is emphasised in two amendments to the General Agreement.

From a legal point of view one commentator has suggested that: non-discrimination, open markets and fair trade are the GATT main principles.<sup>5</sup> Reciprocity is also described as a commonly invoked principle. In other words, it can more easily be said that GATT rules manifests examples of the non-reciprocity principle.<sup>6</sup> In conclusion non-discrimination, reciprocity and transparency are the main GATT principles. They lead to an open trading environment and exchange of concessions with respect to the lowering of trade barriers. Both classical and neo-classical trade theory states that free trade will maximize the level of welfare of the countries participating in international trading system.<sup>7</sup>

The contracting parties are also prohibited from awarding any trade preference or privilege to certain contracting parties whilst ignoring the other parties. It must be realised that developing countries are exempted from this obligation when giving such concessions to each other. It is also believed that Article I does not apply to measures taken against unfair trade practices (such as countervailing duties imposed on subsidised imports) because these are inherently discriminatory, and that the only applicable anti-discriminatory rule is that of Article XX (d).<sup>8</sup>

When the US or EC negotiate with Bangladesh or Botswana, there is little evidence of reciprocity as described in the principle. In relation to the developing countries as Dr. Khan has written: The principle of reciprocity is substituted by the principle of non-reciprocity and eventually the operation of the MFN principle is suspended in favour of the principle of '*Differential and More Favourable Treatment to the developing countries*'.<sup>9</sup>

In practice, the assumption of economic equality of contracting parties did have some validity in the early days of the GATT when most of them were industrialised countries, but that balance was changed substantially when the number of contracting parties expanded to accommodate many new developing, least-developed and landlocked countries.<sup>10</sup>

### ***B- THE RULES OF PROCEDURE IN THE GATT NEGOTIATIONS***

The traditional method of negotiations in the GATT is the request and offer approach. The contracting parties identify the changes they desire in the trade barriers of others and draw up a list of their own barriers on which they are prepared to negotiate. Although dealing takes place bilaterally, the outcome is '*multilateralized*' as a result of the GATT MFN principle.

A second approach which was introduced in the Kennedy Round negotiations, involves agreement on an '*across-the-board cut*' in tariffs. The depth of the cut is the focus of discussion, but exceptions can still be negotiated through the '*request and offer*' method. A third method of negotiation, the rules and obligations approach, was practised during the Tokyo Round negotiations in the 1970's to address non-tariff barriers.

Owing to the particular nature of agricultural products it is difficult to liberalise them by using these tariff related negotiating methods. The first approach is useful when the trade barriers are easily identifiable, such as quotas and tariffs. But it should be realised that tariffs and even quotas are not the major barriers to trade in agricultural commodities. The main instruments of agricultural protection are domestic policies and non-tariff measures that are more complex than ordinary tariffs.

On the other hand, many countries have had trouble in applying the GATT rules that are sufficiently strict to constrain domestic policies. The rules were originally drafted to avoid conflicts with domestic policies.<sup>11</sup>

### **(1) Schedules of Tariff Concessions**

The reduction of the level of protection is among the prime objectives of the GATT. It must be carried out through the prohibition of quantitative restrictions and the decrease in existing tariff levels via reductions in reciprocal tariffs. In order to fulfil these objectives and as a practical step, Article II introduces the special scheme of '*schedule of concessions*' under which the contracting parties to the GATT are obliged to undertake the commitment to levy tariffs concession at no more than the proposed schedules of item-by-item tariffs of which the detailed lists are normally achieved during the GATT rounds.<sup>12</sup>

### **(2) Subject of the Negotiations**

The primary subject matter of the GATT is trade in goods, although there are some closely related provisions, especially in the GATT analytical index.<sup>13</sup> They are not specifically referred to in the General Agreement but action has nevertheless, been taken by the contracting parties.<sup>14</sup> For the purpose of serving developing countries agricultural trade interests, it is necessary to focus on some of these issues .

## **C- MAIN INSTITUTIONS OF THE GATT**

The GATT's institutions are set up to carry out its legal duties towards contracting parties.<sup>15</sup> They are categorised as: i)- Contracting Parties,<sup>16</sup> ii)- Council of representatives,<sup>17</sup> iii)- Consultative Group of Eighteen,<sup>18</sup> iv)- Secretariat,<sup>19</sup> v)- Committees and other bodies,<sup>20</sup> vi)- Negotiating Rounds. Like any other contracting party, developing countries should be able to benefit from these organs, but under normal circumstances these organs cannot provide special favours to developing countries in comparison to industrial countries. It is therefore, important for developing countries to participate actively and to realise how it may be possible to benefit from the underlying

provisions. In order to provide a clear idea of the GATT institutional framework, a flow Chart is provided as 'Table 5' on the next page.

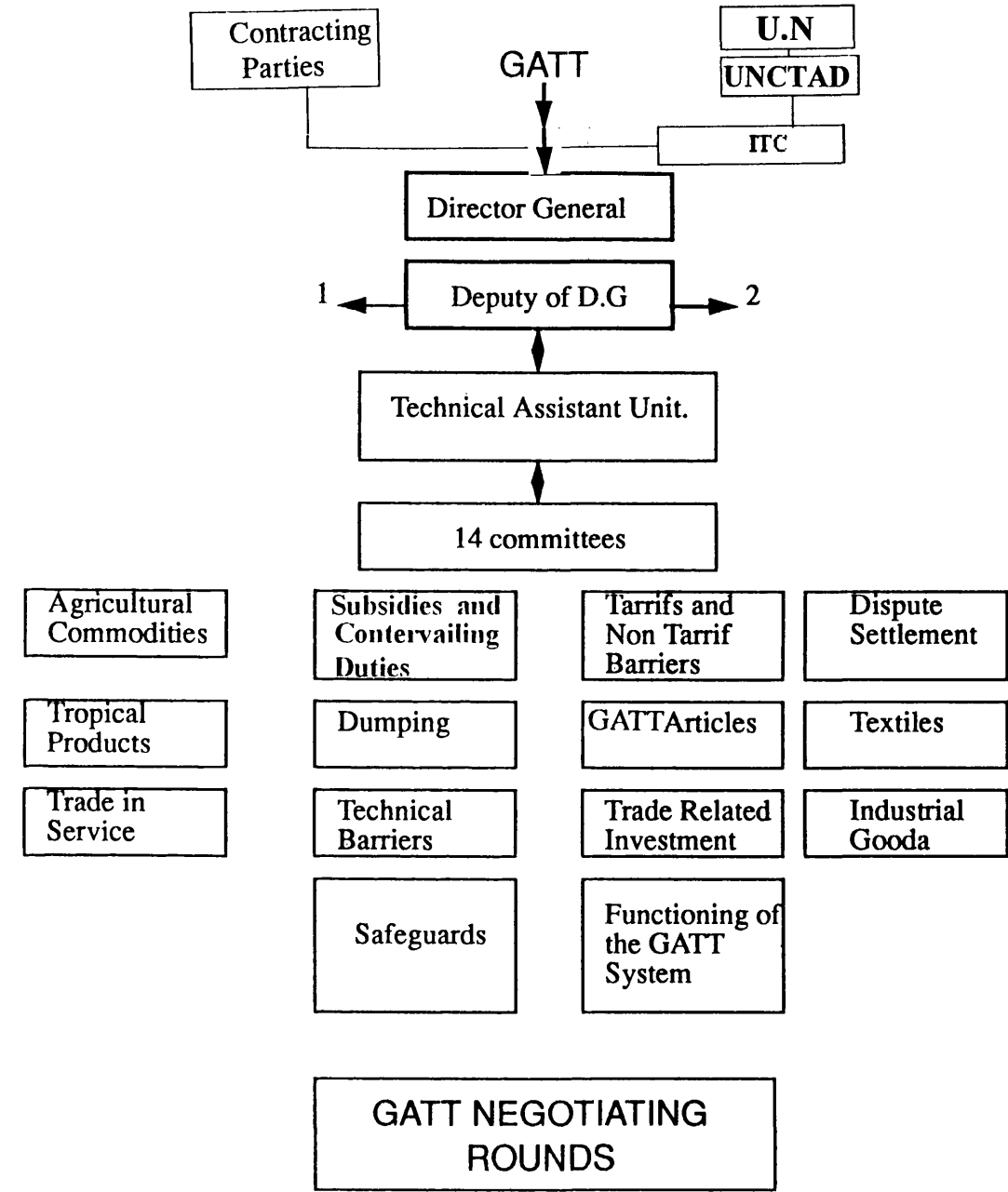
#### ***D- INTERNATIONAL TRADE CENTRE AND DEVELOPING COUNTRIES***

The International Trade Centre (ITC) was founded in 1964 in order to assist developing countries to expand their level of exports. Owing to the importance of agricultural trade in third world countries, one of the main aims of this Centre is concentrated in this field. The Centre is a joint body of UNCTAD and GATT and amongst its objectives is the provision of '*assistance to developing countries in the field of trade promotion*'.<sup>21</sup>

The parent organisations are jointly and equally responsible for policy guidance and the programme orientation of ITC, especially for policy matters, operation and management, acceptance and use of trust funds, the review of the work programme and budget and finally review of programme performance.<sup>22</sup> The ITC can be treated as a potential and prospective establishment relating to the development objectives of the GATT for serving the developing countries, by giving technical assistance to them and to further their active participation in the negotiations. On the other hand, the role of UNCTAD as an important UN body dealing with developing countries can not be ignored. Such a joint co-operation is helpful, since two parallel organisation are able to share their past experiences and future plans for collective responses to the third world needs for an active trade practice.

Table 5

ORGANIZATION CHART OF GATT



1.Geneva Round (1948)	4.Geneva Round (1955-56)	7.Tokyo Round (1973-1979)
2.Annecy Round (1949)	5.Dillon Round (1960-61)	8.Uruguay Round (1986-1993)
3.Torquay Round (1950-51)	6.Kennedy Round (1964-1967)	

The original source of the Chart is GATT Document No.1510, p.3. but new changes have been made.

## **II. THE GATT SUBSTANTIVE RULES AND DISCIPLINES DEALING WITH AGRICULTURAL TRADE POLICIES.**

Since the establishment of GATT, agricultural issues have been amongst the most controversial areas on its agenda. In the present section an analytical study of these provisions will be carried out, as well as a study of the importance and role of agricultural trade amongst the majority of participants in their day to day relations. Perhaps it is not possible to examine the two homogeneous and complementary issues of agricultural trade and developing countries separate from each other, since developing countries economies are heavily dependent on the export earnings from trade of agricultural products .<sup>23</sup>

### ***A- BORDER PROTECTION MEASURES***

Border protection measures are amongst the essential elements of agricultural support policies that form common trade practices in many industrial countries. In GATT terms they come under three provisions namely: 1)- Exceptions under Article XI:2 of the General Agreement 2)- Special exceptions (waiver, under the Protocol of Accession) 3)- Measures not covered under the General Agreement. <sup>24</sup>

The main examples of the first kind of provisions are; quantitative restrictions on agricultural products which are permitted (in some cases) under Article XI; special attention is paid to subsidies, especially export subsidies measures on agricultural products as '*primary products*', are included under Article XVI.<sup>25</sup>

#### **(1) Article XI and its exceptions to the general elimination of quantitative restrictions .**

Article XI of the GATT relates to the '*General Elimination of Quantitative Restrictions*'. What are quantitative restrictions? They are defined as: 'the amount of a



product which can be imported,<sup>26</sup> irrespective of the tariff charged.’ Imports in excess of this amount are not allowed. Since the main discussion of Article XI relates to certain exemptions to this general rule and directly involves agricultural products, food shortages and food security issues, it is considered as one of the main GATT Articles designated to agricultural trade issues.<sup>27</sup>

**a- Exceptions under Article XI:2 of the General Agreement**

Paragraph 1 of Article XI forbids the application of any restrictions other than those named to the sale or export of any product by contracting parties:

1.No prohibition or restriction other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

It is believed that Article XI tries to close the door to any abuse of quotas, import or export licences or other measure which forms an obstacle to trade liberalisation.<sup>28</sup> Consequently the exceptions to this general ban are provided under paragraph 2 of the Article particularly sub Articles 2(a) and 2(c)(i). ‘*The provisions of paragraph 1 of this Article shall not extend to the following: (a) and (b)...and (c)...*’ The main part of the argument is laid out in these sub Articles which will be discussed in turn.

Although the term ‘*quantitative restriction*’ is often used to mean simply a quota, the inclusion of the words ‘*or other measures*’ indicates that the scope of the paragraph is not limited to quantities. Its application is determined by the consequent result rather than by the form of the action in question.<sup>29</sup>

Claire Wilcox, the American chief negotiator in the GATT negotiations, referred to these restrictions as imposing rigid limits on the volume of trade by indicating that

quantitative restrictions :

insulate domestic prices and production against the changing requirements of the world economy. They freeze trade into established channels. They are likely to be discriminatory in purpose and effect. They give the guidance of trade to public officials; they cannot be divorced from politics. They require public allocation of imports and exports among private traders and necessitate increasing regulation of domestic business.<sup>30</sup>

Wilcox also believes that quantitative restrictions are among the most frequently applied methods that have been devised for restricting trade. They are also treated as regulations serving to isolate the local market from the world market, by permitting both the quantity and content of imports to be controlled, and consequently helping to facilitate economic planning.

**b- Article XI:2 (a) exception, and shortages of foodstuffs etc.**

Article XI:2 (a) reads "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;" The reference to critical shortages of foodstuffs in this sub-Article gives special power to countries to prevent the export of foodstuffs that are of internal shortages.

In other words, Article XI:2(a) permits export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other essential products. This constitutes the closest thing to a food security clause under the GATT, but applies only to an exporting country, which would have the right to decide for itself what products are '*essential*'. The limiting factors are that the shortage should be a critical one and that the measures be temporary. There is no provision under the GATT for an importing country to restrict imports of foodstuffs in order to assure domestic production for food security reasons '*per se*.' It is possible to indicate that a permanent exception in this area could possibly assist the importing countries in order to assure their domestic production and consequently their food security. This is

common to many developing countries, especially food importing countries, that the lack of such provisions may act as a counter measure against their farming population interests.

**c- Article XI:2(b) and the exception for the Standards Code**

Sub-Article (b) in Article XI:2 makes Article XI:1(which permits certain exemptions to the General Elimination of Quantitative Restrictions,) inapplicable to prohibitions or restrictions 'necessary to the application of standards of regulations for the classification, grading or marketing of commodities in international trade'.

In the interpretation of the sub-Article on the Standards Code, it is possible to note that it is based, in part, on Article XX(b) of the GATT, permitting restrictive measures 'necessary to protect human, animal or plant life or health' when those measures are not a means of 'arbitrary or unjustifiable discrimination' or a 'disguised' restriction on international trade. The actual purpose of Article XI:2(b) and of Article XX(b) should be examined, and the interpretation of these provisions should be coordinated in the Standards Code. Although the Code applies to all products, it only tangentially addresses agricultural trade issues.

A practical example of this reference is in Section 14.25 of the Standards Code which allows the Code dispute settlement procedures to be invoked :

....where a party considers that obligations under this agreement are being circumvented by the drafting of requirements in term of processes and production methods rather than in terms of characteristics of products. <sup>31</sup>

Some recent agricultural trade disputes have proved the importance of a clear distinction between process and production methods and the real 'characteristics of products' in question. For example the dispute regarding spin chilling of poultry. The EC's so-called 'third country Directive' established scientific standards which must be met by any potential foreign meat processing plants. From the US exporters point of view

the rule is discriminatory, since similar standards are not imposed on Community processors. They also argue that their products already comply with the Community's standards. The extra costs of complying with the EC's standards can be substantial, and indeed few plants have been certified as being in compliance. A similar and controversial dispute concerns the use of growth hormones in animals, when the EC refused to accept a testing scheme initiated by the US, which subsequently raised the matter under the dispute settlement provisions of the Standards Code.

**d-Article XI:2(c):Quantitative Restrictions and Exceptions for certain farm programmes:**

Article XI:2(c)(i) permits:

import restrictions on any agricultural or fisheries products, imported in any form, necessary to the enforcement of governmental measures which operate to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted.

The second sub-Article introduces internal measures that operate ;

".....to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at price below the current market level ;....."<sup>32</sup>

Regarding the first paragraph, an interpretive notes to the term 'in any form' specifies that it "cover the same products when [they are] in an early stage of processing and still preactable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective."<sup>33</sup>

In addition, measures to restrict domestic animal production by restricting imports of particular feed grains or other animal foodstuffs are permitted, provided

domestic production of the restricted commodities is '*relatively negligible*.'

As stated, such exemption only applies where the agricultural import restrictions are necessary to the enforcement of governmental measures imposing certain limits in domestic production or sales of products.<sup>34</sup>

**e- Clarifying some ambiguous terms in Article XI**

The last paragraph of Article XI and its later amendment clears some ambiguous terms in the Article by indicating:

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value....

In one of the recommendations of the committee on trade in agriculture<sup>35</sup> in 1983, it was suggested that, in order to allow market forces to operate to a much greater extent, to liberalise trade and to prevent more serious prospective surpluses the '*tariffs only*' approach was recommended as follows:

i)- all non-tariff barriers maintained under Protocols of Accession, waivers, Grandfather Clauses,<sup>36</sup> state trading, or measures not specifically provided for, such as variable levies and minimum import prices, should be phased out;

ii)- It was suggested that Article XI, which was originally meant to provide for the general elimination of restrictions other than tariffs, should be amended by the deletion of all but paragraph 1 of the Article, so tariffs would be the only permissible restriction on trade;

iii)- as unbound tariffs<sup>37</sup> are a problem in agriculture, all unbound tariffs should be bound and should be the subject of negotiations.

The Article might be strengthened by interpretation of the words '*temporary*' in article XI:2(c)(ii), '*necessary*' in Article XI:2(b) and '*previous*' '*representative period*'

in Article XI:2 together with a reporting requirement based on Article XI: 2.

The other suggestion was to establish some concordance between the reference to '*any agricultural or fisheries products*' in Article XI:(2)(C) and '*any primary product*' in relation to Article XVI:3 of the GATT. As discussed in Chapter one disputes have arisen as the meaning of the term primary products.<sup>38</sup>

It seems that Article XI:1 is applicable to import restrictions on any '*agricultural or fisheries product*' in any form (including slightly processed perishables that compete with the fresh products) '*necessary*' to the enforcement of three types of domestic programmes or measures: production or marketing controls, removal of a '*temporary*' surplus through free or below market food given away to consumers, and production controls on animal products when production depends on imports.

#### **f- Article XI and the position of industrial countries**

The United States and the EC have ignored Article XI. Instead, each has provided protection at their borders for certain farm produce without regard to the existence of the measures mentioned in Article XI:2(c). In practice both the US and the EC have tried to escape from the obligation of this Article. In 1955, the US obtained a waiver under Article XI<sup>39</sup> so that it could apply fees and quotas to agricultural imports which interfere with domestic farm programmes under Section 22 of the US Agricultural Adjustment Act of 1933.<sup>40</sup>

The EC further has determined that its common levies and minimum import prices were sanctioned by the GATT at the time the Community was created. As a result of a complaint on this issue,<sup>41</sup> a GATT panel was established and the US representative argued that the minimum import price for tomato concentrates,<sup>42</sup> which prohibited the importation of the product below a certain price, was a restriction on imports and, thus, in breach of Article XI:1. The US again argued that the effect of the minimum import

price was to raise the price of the product for the benefit of EC agricultural producers by limiting imports.

Additionally the system could not be justified under Article XI:2(c) as there was no system leading to the restriction of domestic production. The EC representative argued that the idea of establishing the system was to prevent imports coming in at prices which would adversely affect the intervention system of the fresh tomato market.

As a result of the panel's proceedings and analysis, the following conclusions emerged: the minimum import price was a restriction within the meaning of Article XI:1.; more importantly, the intervention system for fresh tomatoes did not constitute a governmental measure under Article XI:2(c).

Since this measure was not justified under Article XI:2(c), there was a prima-facie case of nullification or impairment of the benefits pertaining to the US under the General Agreement.<sup>43</sup> This particular complaint is illustrative of two points. Firstly as stated earlier, Article XI cannot be used for protectionist purposes; and the restrictions on import must be accompanied by substantially equivalent restrictions on domestic production. Secondly, it indicates the rise of non-tariff barriers (i.e. licences and security deposits) as a method of controlling the import of directly competitive agricultural products.<sup>44</sup>

**g- The conditions and the adequacy of quantitative restrictions which are permitted under the GATT.**

Article XI:2(C)(1) in its present form permits restrictions (but not a prohibition) on imports of any agricultural or fisheries product imported in any form under two basic conditions.

1)- restrictions must be necessary to the enforcement of governmental measures which operate to restrict the quantities of the like domestic product permitted to be marketed

or produced.

2)- that the import restriction shall not be such as to reduce the total of imports relative to the total of domestic production reasonably expected to prevail between imports and domestic production.<sup>45</sup>

Here the question of adequacy of the existing Article XI:(2)(1) for bringing all quantitative restrictions under a common discipline arises. It seems that this Article involves criteria for the innovation of quantitative restrictions and the conditions under which substantially all quantitative restrictions might be brought under effective rules and disciplines. It is obvious that the maintenance or continued expansion of import access is more likely to be assured in an environment in which domestic production is effectively controlled.

In practical terms, the range of quantitative restrictions applied in conformity with the existing Article XI:2(c)(i) criteria is not extensive. This in itself, however, does not constitute a valid basis for relaxing the existing criteria, since to do so would involve the risk of merely legitimising certain non-conforming measures at the expense of jeopardising existing unrestricted tariff bindings.

In a draft elaborating upon Article XI, in relation to the establishment of the *committee on trade in agriculture*, it was stated that:

Such an approach could hardly be regarded as a strengthening of the linkage under Article XI between national policies and trade measures, or as a step in the direction of greater liberalisation of trade in agriculture. On the other hand, if Article XI:2(c)(i) is to be more operationally effective, some better definition is needed of the domestic measures or policies in respect of which contracting parties may legitimately have recourse to quantitative restrictions.<sup>46</sup>



**(2) *Special exceptions ( waiver, protocol of accession )***

There are two distinct circumstances under which Contracting Parties have exceptions for border protection measures.

**a- special exceptions under waiver**

The first circumstance is when the General Agreement has failed to provide sufficient scope for subsequent or reinforced protective measures. In such cases additional exceptions were sought and granted to individual countries. An example of this practice was the controversial waiver of 1955, when GATT granted a waiver pursuant to Article XXV:5 to the US from its obligation under article II and XI:

to the extent necessary to prevent a conflict with such provisions of the General Agreement in the case of action required to be taken by the Government of the United States under Section 22.

Section 22 of the US Agricultural Adjustment Act in 1933, as amended, requires that either fees or quotas be imposed on imported products by the President, whenever he finds that imports "render or tend to render ineffective, or materially interfere with" any US Department of Agriculture (USDA) price support or similar agricultural programme, or "reduce substantially the amount of any product processed in the USA from any agricultural commodity or product thereof" which is covered by an agricultural programme. Import controls pursuant to section 22 were applied on certain dairy products, cotton, peanuts, and sugar and sugar-containing products.

**b- Exception under Protocol of Accession**

The second exception from the obligation of Article XI is practised under the Protocol of Accession. For example, Switzerland has an exception specifically relating to agriculture incorporated into its 1966 Protocol of Accession to the GATT. Switzerland has reserved its position with regard to the application of the provisions of Article XI to the extent necessary to permit it to apply import restrictions pursuant to certain Swiss legislation concerning agricultural products.<sup>47</sup>

Since these measures are in contradiction with the general provisions of the GATT, and are controversial issues in agricultural trade, there have been certain proposals that all such specific exceptions allowed through waivers, Protocol of Accession, or the 'Grandfather Clauses'<sup>48</sup> should be eliminated and made consistent with revised rules and disciplines.

### ***(3) Measures not covered under the GATT***

There are certain types of restrictions on agricultural imports which are not subject to rules expressly mentioned in the GATT, and have largely escaped the General Agreement control system. These rules are subject to so called gray-area measures namely, variable levies, voluntary restraint agreements, counter-trade and long-term purchasing agreements. Many industrial countries, especially in Europe, rely on variable levies, voluntary restraint agreements, counter-trade and long-term purchasing agreements as measures for restricting imports.

The governments rely on variable levies of one sort or another to ensure that foreign imports do not undercut prices of domestic products. There was a common intent in the inclusion of certain measures within this area into the GATT, whether they are non-tariff, quantitative restrictions, or unbound tariffs whose levels are variable, but there has been no consensus on how the variable levies may be covered under the General Agreement. The reluctance of certain industrial countries on solving this issue cannot be ignored.

There were also some proposals in the early Uruguay Round negotiations for the elimination of variable levies and minimum import prices. Other counter proposals in the negotiation also suggest that they should be maintained, providing that the calculation of minimum import prices or of the differential between domestic and world prices is given clearer definition.

***B- SUBSIDIES UNDER GATT ARTICLE XVI.******(1)- Export subsidies ( 2) - Domestic subsidies.***

The rules on subsidies appear at various points throughout the General Agreement. For example, Article III:8(b) excludes 'the payment of subsidies exclusively to domestic producers' from the national treatment obligation. Article VI contains provisions on anti-dumping and countervailing duties. Lastly Article XVI (as amended in 1955) makes a distinction between subsidies, in general, and export subsidies. Article XVI is examined below:

Article XVI, Section A reads :<sup>49</sup>

if any contracting party grants or maintains any form of income or price support which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidisation necessary....

The Article clearly indicates the alternative approaches for subsidies, but it does not define it. Subsidy may be defined as: <sup>50</sup>

Effectively, a method of supporting a price. The government subsidises prices when it allows goods to be sold at a price lower than the market price, by giving the seller the difference between the *selling price*<sup>51</sup> and a viable one. The term subsidy is also used for a sum of money given by one person to another to help him over a difficult period.

It should be realized that sometimes governments buy public goods from farmers or producers, or foreign countries directly or through governmental agencies, in order to sell to the public at a lower rate or without any administration or storage charges. In such situations since there is no potential seller to receive the difference between the two prices in the above definition, it is possible to assume that the government itself subsidises the consumers.

One aspect of non-tariff barriers which was recognised by the founders of the GATT concentrated on the provision of export subsidies. In this respect Article XVI:(3) was devised to deal with export subsidies for primary products as follows:

contracting parties shall seek to avoid the use of subsidies on the export of primary products. If however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product...

As the paragraph indicates, the obligation of each Contracting Party to acquire, through the use of export subsidies, is limited to achieve not more than 'equitable share of world trade'. In the light of Article XVI:3 account should be taken of the previous performance of contracting parties. An exporting contracting party entering into the market for the first time will not mean that the party has acquired more than an equitable share of the market.<sup>52</sup> The equitable share obligation governing export subsidies on primary products is based on *ex-post facto* evaluation of the trade effects of such subsidies, and has proved to be largely unenforceable.<sup>53</sup>

In practice, given the factors which may cause a rise in exports from one contracting party to the detriment of another, such as crop failure or advantages gained from lower transport costs, it is also clear that the phrase in question presents a considerable definitional problem. As a result of complaints made by Australia against French exports of wheat flour, a GATT panel was established. The panel listed several factors which it considered relevant in determining whether or not a contracting party has acquired more than an equitable share of world trade.<sup>54</sup>

The panel determined that it was important to consider the desirability of satisfying world requirements in the product concerned, taking into account the special

nature of the product. The panel also established that there had been a quantitative increase in the level of French exports of wheat flour. It struggled with the problem of establishing a causal connection between the subsidy and the increase in the share of world export trade. The nature of this causative problem can be justified by reference to the fact that increase in exports may be due to factors other than subsidy matters.<sup>55</sup>

**a- Subsidies code and the weakness of export subsidies provisions.**

Article XVI:3 is weak as regards the use of subsidies for the export of primary products.<sup>56</sup> The Tokyo Round negotiations discussed this weakness and the final result of the Round led to the creation of the '*Code on Subsidies and Countervailing Duties*'.<sup>57</sup> The export subsidies issues were fully interpreted in Article 10 of the Subsidies Code, attempting to make the GATT rules stronger by making them more specific and by defining various ambiguous terms. The overall result generally was to some extent welcomed by developing countries who faced competition by subsidised agricultural commodities exported from industrial countries. The industrial countries especially the US, were not satisfied with the new GATT Subsidies Code. Objections centred around the mechanisms for assessing the share of world trade and the periods to be taken into consideration when determining any such change over time. The US objection had two main grounds: First Article 10:2(a) and (b) of the Code which provides that:

- (a) 'more than an equitable share of world export trade' shall include any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind developments on the world markets;
- (b) with regard to new markets, traditional patterns of supply of the product concerned to the world market, region or country, in which the new market, is situated, shall be taken into account in determining "equitable share of world exports trade";

The second ground was: Article 10:2(c) of the subsidies code which indicates

that: '*a previous representative period*' shall normally be the three most recent calendar years in which normal market conditions existed.

Despite the overall satisfaction of developing countries with the Code some questions remain:

- a)- are world markets to be determined by considering both commercial and non-commercial export sales?
- b)-does one country displace another when the subsidising country increases its share of an expanding market, as in the poultry case<sup>58</sup> or when it increases its share at the expense of another exporter, as seen in the sugar and wheat flour cases? <sup>59</sup>
- c)- what is a new market and what conditions of competition are allowable there ?

The definitional problems inherent in Article XVI:3 have not been remedied as this new definition looks into the effects of export subsidies on the trade and production of other signatories. In practice this conclusion is illustrated by reference to the GATT panel's findings on complaints made separately by Australia and Brazil about EC refunds on the export of sugar.<sup>60</sup>

After the panel finding of serious prejudice or threat of serious prejudice to Australian and Brazilian interests, the GATT established a working party to discuss the possibility of the EC limiting its subsidisation of sugar exports.<sup>61</sup>

Here the legal base for the working party was Article XVI:1 which clearly states that:

In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or retained by such subsidisation, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned or with the Contracting Parties, the possibility concerned of limiting the subsidisation.

By referring to Article 25 of the Havana Charter, the members of the *Working Party* argued that<sup>62</sup> the EC, rather than its producers, had a positive obligation to limit

the effects of the subsidisation. The majority of the working party members concluded that the EC countries had not advanced any meaningful possibility of limiting the subsidisation and their failure to do so is an indication that the threat of serious prejudice, (found to exist by the GATT panels) would continue.<sup>63</sup>

Regarding the Subsidies Code, it is possible to conclude that the Code reaffirmed the material injury criterion,<sup>64</sup> recognised the possibility of Article XXIII actions, improved the procedures to be followed and established a commission on subsidies and countervailing measures with supervisory powers. Some of the concepts were better defined and an updated version of an '*illustrative list*' of practices considered and added to the General Agreement. However, the Subsidies Code did not fundamentally depart from the original GATT provisions. On some controversial issues no agreement was reached. Therefore the differential treatment of export subsidies on primary and manufactured products continued. There is still no connection between the concepts of Article XVI and Article VI, or in Jacksons' opinion:

....between the GATT obligations on the use of subsidies, the violation of which may give rise to claims for compensation by the aggrieved party, and the GATT rules on which imports of products produced or exported with the assistance, to remember that even if a subsidy is not prohibited by GATT, GATT may permit it to be offset by countervailing duties, and in the view of some, vice versa. <sup>65</sup>

On the basis of the Agreement on the interpretation and application of Article VI, XVI, and XXII<sup>66</sup> which embodies the Code on Subsidies, it is possible to conclude that the Article realised that *export subsidies* may cause injury and in order to minimize such injury, the code provides two criteria: i)- that GATT member governments must avoid granting export subsidies on primary products; and ii)- that, in the case of *non primary* products they should not grant, either directly or indirectly, any form of subsidy which would lower export prices below prices in domestic markets.

This prohibition on the use of export subsidies does not apply to developing countries but only to industrial countries on the base of 1960 GATT Declaration on Export Subsidies.

## **2) - Domestic Subsidies**

Article 8:2(c) of the Subsidies Code pledges the signatories to undertake that they will '*seek to avoid causing, through the use of any subsidy .... serious prejudice to the interests of another signatory*' in any other market. This Article was used as a basis for complaints in cases involving pasta<sup>67</sup> (regarding home market competition), canned fruit (export market competition), sugar,<sup>68</sup> poultry, wheat flour and some other agricultural products.<sup>69</sup> A majority of the recent disputes have concentrated on US complaints about internal assistance or subsidisation by other states, including special support given to grain producers as a result of the enlargement of the EC to include Portugal and Spain as additional EC members.<sup>70</sup>

Domestic subsidies were also the focus of many multilateral negotiations. For example, in the Tokyo Round negotiations, it turned out to be impossible to determine a criteria for the application of domestic subsidies, taking into account all its possible effects (such as distortion created by competition) to the overall economic performance of the contracting parties.<sup>71</sup> At present, the GATT does not have the substantive norms, nor the institutional machinery, for creating and monitoring such criteria.

It is possible to conclude that progress in this area will not be on the basis of a new agreement prohibiting the use of export subsidies in any form, since such an agreement would be difficult to negotiate and take much time for implementation. Rather, such progress should be through the avenues already provided by the GATT, and especially by Article XVI;1.

However, since progress in this area is dependent on a dispute between two or



more interested parties, a new role should be found for the committee on subsidies established by the 1979 code.<sup>72</sup> Lastly, progress in the area of export subsidies will be slow, given the prevalence of these measures. However the proposal made above seeks to prove that any progress in this area should be balanced and reciprocal. This would make the necessary political commitment to such reform a little more forthcoming.

### ***C- SANITARY AND PHYTOSANITARY MEASURES IN ARTICLE XX***

Sanitary and phytosanitary measures play an important role in contemporary agricultural trade practices. Article XX provides an exception from the GATT obligation for the adoption or enforcement of measures necessary to protect human, animal, or plant life or health "subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or [are] a disguised restriction on international trade..."

From a legal point of view two definitions were given to sanitary or phytosanitary measures :<sup>73</sup>

1. Any measure designed and applied to protect human, animal or plant life or health from risk arising from or created for agricultural, fishery products.

The second definition refers to certain preventive measures:

2. Any measure indicated to control or prevent the movement across national boundaries, of pests, disease, disease-causing organisms and disease-carrying organisms which can adversely affect human, animal or plant life or health or otherwise cause damage, together with measures intended to control or prevent the use of additives and the presence of contaminants in foods and beverages in order to protect human health.

Further guidelines in Annex A on sanitary and phytosanitary measures gives a proper explanation of all issues relevant to border control and governmental practices in this area.<sup>74</sup> The agreement applies to all such measures used by contracting parties

who must ensure that their existing legislation in this area is made consistent with the agreement within two years following the entry into force of the said agreement.

Although it is logical for any society to protect and safeguard its consumers against the import of health hazardous products, in recent years the application of various complex regulations in this area have proved to be a major obstacle to agricultural trade of developing countries.<sup>75</sup>

It is also a common barrier for industrial countries trade. For example the prohibition of tomatoes import from Brittany (France) to US markets was declared because of the presence of the Mediterranean Fruit Fly that appeared in the Mediterranean regions of France. The EC considered the application of these measures by US authorities to be excessive and not justifiable on phytosanitary grounds .

In recent years the US intensified its pressure in this area by strengthening its rules and legislation, relating to the ban on the use of hormones in meat production, the controls by US '*Food and Drug Administration*' (FDA), '*Environmental Protection Agency*' (EPA), the '*Nutrition Labelling and Education Act of 1990*' (NLEA) may be considered as common examples of such regulations .

The US concern for stricter standards on imports not only affects the EC and other industrial countries but they even affect developing countries. It is one of the reasons behind the inclusion of sanitary and phytosanitary measures in Uruguay Round agenda.

What worries developing countries is the application of these rules as another obstacle to their fragile trade, although no one could deny the importance of these rules in agricultural and foodstuff sector. The present developing countries production and trading standards are far from being in conformity with the proposed complex rules. The application of any of these measures could create another obstacle to free flows of their agricultural commodities to industrialised markets.

***D- ARTICLE XIX, EMERGENCY ACTION ON IMPORTS.***

Article XIX allows protective measures to be taken in special circumstances to safeguard domestic products, but before any recourse to the safeguard clause, three conditions must be fulfilled:

There must be an increase in the level of imports; such increase is to be attributable to a)- unforeseen developments and b)- the effect of GATT obligations; and the increased level of import must cause or threaten serious injury to domestic producers of like or directly competitive products. In practice, it is not necessary to show that there has been an absolute increase in the level of imports. Such condition is satisfied merely by showing that there has been a relative increase in imports that must create a potentially dangerous device, given the prevailing economic conditions. Its availability for protectionist purposes is constrained by the subsequent conditions and other provisions of Article XIX.

The second condition relates to the aspect of causation. The level of imports must be due to unforeseen developments and the effect of an obligation incurred under GATT. The question concerns the meaning of '*unforeseen developments*'. In this respect an early GATT working party report realised the difficulty of interpreting this provision and finally suggested the following definition:

Unforeseen development should be interpreted to mean development occurring after the negotiation of the relevant tariff concessions which it would not be reasonable to expect that the negotiators of the country making the concession would and should have foreseen at the time when the concession was negotiated.<sup>76</sup>

By this definition, it is possible to conclude that any increase in imports can be attributed to unforeseen developments. Indeed, in examining the interpretation and application of article XIX, one may conclude that, in the benefit of the doubt, on the question of the unforeseen development, seems to go to the contracting party invoking Article XIX.<sup>77</sup>

**(1) Article XIX and the MFN concept**

Some commentators believe that in the case of a non-discriminatory safeguard action taken pursuant to Article XIX, trade disadvantages, as opposed to advantages, that are imposed on one country's export of particular goods also apply to all other supplier countries. In other words, the MFN principle turns into a most disadvantaged nation principle.

The reciprocity which derived from the negotiation on tariff concessions can thus be changed into compensation and retaliation provisions under Article XIX utilised as a corrective mechanism. There may be the assumption that countries best placed to retaliate would be equally affected with less powerful countries, and would act effectively to cut short protective measures.

In recent years the abandonment of Article XIX by most GATT parties and the resulting consequences requires more elaboration :

a)- the main purpose of MFN clause in bilateral trade agreements was to ensure that powerful trading parties each secured, often from weaker countries, the benefits accorded to other powerful parties. On the other hand one of the most important functions of the MFN principle was to ensure that weaker developing countries obtain the benefits accorded to powerful nations. That is why they are exempted from the reciprocity principle in tariff negotiations; but this has not secured any tariff concessions on sensitive items. The reciprocity principle still applies in the case of safeguard measures, where the concept prevails that it should operate as a penalty.<sup>78</sup>

b)- the parties have to balance global obligations against distinguishable national interest or powerful lobby groups, for example, with respect to the applied safeguard clauses in bilateral agreements to enable them to protect their domestic interests without breaching international obligations.<sup>79</sup> Article XIX recognises this in a multilateral

context by allowing state intervention to meet the situation where an industry is faced with a sudden rise of import competition<sup>80</sup>

c)- it must be realised that the application of the MFN and the reciprocity principles to Article XIX measures is based on an interpretive note to Article XIX consultations, according to which all supplier countries are to be treated equally by the country imposing the safeguard measure and although, unlike Article XXVIII, there is no specific requirement to offer compensatory adjustment, in practice the process of consultation may produce a similar result.<sup>81</sup>

d)- a further justification advanced for the application of the MFN principle to Article XIX measures is that the right to retaliate against a unilateral withdrawal of a concession is only useful in the conduct of trade relations where there is equal bargaining position in bilateral trade. In such a situation a country invoking the safeguard knows that it potentially faces an equivalent loss of a trading advantage from a strong trading partner. On this basis, by importing the MFN clause into Article XIX, the interests of the weaker side should be indirectly protected by the intervention of more powerful countries who will wish to restore the reciprocal balance in any bilateral deal.

e)- as originally instigated, Article XIX safeguard measures are supposed to be temporary. However, the language in paragraph 1(1) which allows the measures to be maintained for '*such times as may be necessary to prevent or remedy injury*', together with the consultation procedures, has allowed the affiliation of long-term emergency measures. Those supplier countries, which complain and do not negotiate compensation, have three months within which to impose retaliatory measures. In practice, this loss of remedy has been avoided by the parties '*rolling over*' the consultation process every 90 days and technically continuing consultations.<sup>82</sup>

*E- ARTICLE XXVIII, MODIFICATION OF SCHEDULES*

Article XXVIII has an important role in the context of GATT because tariff negotiations and the resulting concessions from them lie at the heart of the GATT agricultural trading system. This Article enables the Contracting Parties to renegotiate the concessions granted to them on the basis of this Article, especially for two types of negotiations; open season negotiations, and out of season negotiations.<sup>83</sup> It is possible to say that the Article refers to trade in agricultural products which are subject to concessions especially for developing countries. There are two different situations in which the open season negotiations may lead to either the modification or withdrawal of concessions:

Firstly, not earlier than six months before the end of a period of firm validity, contracting parties may elect to modify or withdraw a scheduled concession from the first day to the next period of firm validity.<sup>84</sup>

Secondly, a contracting party may be affected at any time during one period of firm validity. According to Article XXVIII, open-season negotiations must be held with the contracting party with whom the concession was originally negotiated, with any contracting party deemed to have a principal supplying interest, and any other contracting party who has a substantial interest in the concession.

The interpretive notes to Article XXVIII suggest the need for consultation to ensure that those contracting parties having a large share in trade deals, and affected by concessions, have had an opportunity to protect their interests.<sup>85</sup> Perhaps the main purpose of the consultation is to reach agreement on the effect of the modification or withdrawal of the concessions and to provide for compensation for the injured party.<sup>86</sup>

The terms of Article XXVIII also suggests that it cannot be used for protectionist

purposes. Furthermore it provides that the contracting parties shall undertake,

*"...to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this agreement prior to such negotiations."*

When the contracting parties are not able to reach an agreement, Article XXVIII:3 permits the modifications or withdrawal of a concession. This is equivalent to the withdrawal of substantially equal concessions by either the party with whom the concession was initially negotiated, or the contracting party having the principal supplying interest, or the contracting party deemed to have a substantial interest, or all three. This position raises the problem of defining what is meant by '*substantially equivalent concessions*'.

The '*out of season*', negotiations mentioned earlier, are the subject of Article XXVIII:4. The negotiations in question may be carried out at any time, but the only requirement is authorization by the contracting parties.<sup>87</sup> We need to bear in mind that such an authorization is given in very limited circumstances, and for good cause such as development purposes.

Regarding the provisions relating to tariff conferences, there was no provision for them in the General Agreement until the addition of Article XXVIII bis in 1957. The provisions are essentially consistent with the Havana Charter rules. Two principal differences exist. One, of limited importance, is that whereas the Havana Charter imposed an obligation upon members to enter into tariff negotiations upon the request of any other member, the General Agreement imposes no such obligation.<sup>88</sup>

The second principle is that, whereas the Havana Charter required negotiations on a selective product by product basis, Article XXVIII bis provides, in the alternative, for the use of '*such other multilateral procedures as may be accepted by the contracting parties concerned*'.

After the addition of Article XXIII bis, during the Kennedy Round, the Contracting Parties made their first major departure from the system that had been used since the first round of negotiations. They were able to do this without amending the General Agreement. The fourth essence of the change was precisely to reject the selective product-by-product method in favour of a multilateral procedure termed the *linear* or *across the board* method.

In Article XXXVI:8 of the General Agreement the industrial countries clearly stated that they did not expect reciprocity from developing countries for general commitments made in trade negotiations. This principle was reiterated in a decision of Contracting Parties in 1979 following the Tokyo Round.

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### **III. THE GATT DISPUTE SETTLEMENT SYSTEM AND ITS RELEVANCE TO AGRICULTURAL TRADE ISSUES AND DEVELOPING COUNTRIES**

The term '*dispute settlement*' is given to the GATT's procedure for adjudicating legal disputes between the contracting parties. In practice, without a proper enforcement mechanism, it is not possible to enforce any decision or panel finding for or against parties. In other words, a dispute settlement mechanism is merely one part of a broader institutional framework, namely, the subject of the effectiveness of the rules. This broader subject focuses our attention towards a surveillance mechanism, which is a necessity in any international institution or agreement of this nature. In this respect, establishing a sound dispute-settlement procedure could facilitate an appropriate (proper) adherence to rules by contracting parties.

The main reason for including the present section is to examine the structural nature and the impact of the dispute settlement procedure on the agricultural trade performance of developing countries.



It is a common belief that the GATT is unique among international trade arrangements because it is contractual and contains provisions for non-compliance. In comparison, other agreements may contain legal rights and obligations but do not apply to trade universally. Others, such as those drawn up within UNCTAD and OECD are general in nature but contain no legally binding clauses nor any basis for ensuring enforcement.

There is no doubt that agricultural trade is one of the most controversial areas in the GATT and is the subject of many disputes amongst its contracting parties. The long standing conflict of industrial countries in the Uruguay Round over agricultural trade issues is another sign of such controversial nature.

#### ***A- THE NATURE OF AGRICULTURAL TRADE DISPUTES AND THE PROBLEMS OF DEVELOPING COUNTRIES .***

The main aim of the dispute settlement mechanism of the GATT is to preserve the rights and obligations of the contracting parties and to clarify its provisions. Such a system is a central element in providing security and predictability to the multilateral trading system.<sup>90</sup> Agricultural disputes have substantially increased in recent years owing to the huge budgetary costs to governments in agricultural support policies. These costs are associated in particular with surplus production of certain products on the one hand and the ever increasing frictions and disputes regarding trade in agricultural products, on the other. They are a direct result of intensified competition for export markets with the use of export subsidies.

The rules governing trade in agricultural products should be strictly enforced, but the effective application of the newly negotiated rules governing trade in agricultural products requires a strengthened dispute settlement process within the GATT system. Furthermore, considering particular problems that have been experienced in resolving

agricultural trade disputes, it is essential to adopt clear and enforceable rules in this sector to enable the dispute settlement to operate more effectively .

***(1) The effects of agricultural trade disputes on the GATT and the parties.***

Protectionism has an enormous effect on the overall production of agricultural commodities, with a potential capacity to lead to full scale trade wars. A question that may arise regards the role of dispute settlement mechanisms in creating a fairer deal for developing countries.

There are many examples of agricultural disputes that illustrate how protectionist measures of industrial countries play an important role. Among these is the oilseed case<sup>91</sup> which arose after the sharp fall in the production of oilseed, as a result of Dillon Round negotiations (1962), when the EC agreed on a zero-tariff for oilseeds. The EC then applied a protection scheme by subsidising its farmers to substitute for their losses. In the course of a decade, the protection programme brought a fivefold expansion of EC oilseed production. In 1989, the US won a case, which was the biggest GATT case ever filed in terms of trade value, against the EC oilseed policy. The panel hearing the dispute ruled that processor payments discriminated against imports, and that the programme was important in the framework of EC tariff provisions binding on soya-beans and soya products. The EC accepted the panel decision and undertook to change its oilseed policy.<sup>92</sup>

Although the above case may not directly affect developing countries,<sup>93</sup> in many cases they are not able to distance themselves from the overall impact of such disputes. In addition the importance of political and economic involvements or politicisation of the cases in recent years is significant. In other words, there are many ways that politics influences the panel decisions. For example, a trade diplomat from a powerful importing country may indicate, implicitly or otherwise, to a less-developed exporting country that

the granting of development aid, trade preferences or military assistance might have to be reduced or terminated unless the developing country '*voluntarily*' agrees to limit its competitive export of, say, textiles or agricultural products. It may also concern political support for the election campaign of a particular political party in developing countries.

When the cases become politicised, those who have more political influence will win. In such situations the developing countries are mainly the potential losers. Consequently a fairer dispute settlement mechanism for them implies de-politicisation of negotiations and frees them of partisan political and economic influences.

Considering the present conflicts over agricultural protectionism, it is possible to conclude that recent agricultural trade disputes increase international friction, leading to the imposition of trade restrictions. The escalation of such disputes can catch manufacturing goods in the retaliatory crossfire. More generally, such trade disputes endanger the credibility of the GATT system, a key point for industrial countries domestic policies, since agriculture is an important component of any free-trade coalition.<sup>94</sup>

## **(2) *The GATT provisions on dispute settlement***

The original dispute settlement provisions, laid down in Articles XXII and XXIII, were amended in 1955. Further supplementary dispute settlement rules and procedures were negotiated and agreed upon successively in 1958, 1966, 1979, 1982, 1984, and finally became an important subject of the Uruguay Round negotiations agenda.<sup>95</sup> In addition to those main articles there are provisions recommending the use of other multilateral procedures for the settlement of disputes among these: Articles XII:4, XIX:3; XXIII:2, XXIV:7,10, XXV:5, XXVIII:4.

The cardinal dispute settlement provision could be regarded as Article XXIII.<sup>96</sup> It is worth mentioning that there is no specific reference to developing countries, or those countries in a weaker position to cope with complex dispute settlement procedure.

Even paragraph 2 of Article XXIII of GATT that refers to the consultation with '*the Economic and Social Council of the United Nations*' and other appropriate inter-governmental bodies does not seem to have any effect on the developing countries, unless the ECOSOC is prepared to assist them, that in itself is subject of specific formalities and procedures.

As a result of ongoing difficulties in resolving agricultural trade disputes, a number of new proposals for changes to the overall GATT dispute settlement process have been submitted. For the first time a serious attempt was made in the Tokyo Round to bring substantial changes in agricultural trade rules in the GATT, in order to reduce the generation of disputes and the degree of government intervention in the agricultural sector.

Despite some difficulties in the adaptation of panel reports, the GATT provisions have placed some limitations on the arbitrary wills of contracting parties, which otherwise might have generated even more restrictive agricultural trade regimes. In addition, the current rules of dispute settlement in the GATT have prevented the erection of a number of new agricultural trade barriers, simply by disapproving the irregular trade practices of contracting parties. The system also forced the removal or reduction of other unusual barriers to trade.

### ***B-DIFFERENT STAGES IN THE GATT DISPUTE SETTLEMENT PROCEDURES***

#### ***(1) Bilateral consultation and negotiations;***

The first step in resolving a bilateral dispute according to Article XXII:1 is that each contracting party accord sympathetic consideration for consultation to other contracting parties. Thus, the initial focus is on bilateral consultations concluded in language which avoids any reference to confrontation. If the bilateral consultation does not resolve the dispute in a satisfactory way, either of the parties may request

multilateral consultation with the Contracting Parties as a whole under Article XXII:2 of the GATT.

Considering the above requirements, it is possible to compare the first stage of the GATT dispute settlement system with the classic pattern of dispute resolution in many international institutions with five recognisable stages as: a)- negotiations.<sup>97</sup> b)- good offices<sup>98</sup> c)- mediation:<sup>99</sup> d)- inquiry and 'fact-finding'<sup>100</sup> and lastly e)- conciliation.<sup>101</sup>

In addition to the other internationally recognized steps for resolving disputes,<sup>102</sup> the GATT indicates the possibility of resort to other means of dispute settlement such as '*chairman ruling*', fact-finding and inquiry by an independent '*group of experts*'.<sup>103</sup> Since developing countries are less equipped with legal and administrative means<sup>104</sup> to deal with lengthy panel proceeding, early solutions such as negotiations, good offices and mediation are more favourable mechanisms for resolving their disputes.

### ***(2) The request to the GATT Council for appointment of a panel.***

Following the evident inability of two contracting parties to resolve a conflict through consultations and negotiations the GATT dispute settlement procedure starts. A panel normally comprises of three (or occasionally five) neutral individuals agreed to by the parties on an ad hoc arbitration basis to adjudicate on the disputes. Usually these individuals are GATT representatives of neutral countries.

### ***(3) Establishment of a panel; panel proceedings***

Like many other aspects of the GATT's decision making process, the dispute settlement procedures also depend on the parties' consensus. The defendant country must accordingly consent to the creation of the ad-hoc panel, appointment of its members and lastly the adaptation of its terms of reference.

These points can be treated as weaknesses of the system, because no decision is adopted unless every one, including the defendant country, agrees. If the panel rules

against the defendant, this country must also consent to the adoption of that ruling by the GATT Council. The defendant must furthermore consent to any retaliation that is proposed in response to its non compliance. Few countries give consent to comply in such situations.

In practice, those countries who have more political influence and control over the system and have a pre analysis and calculation of the effects of the panel decisions on their trading system may block the procedure. Developing countries are vulnerable on such occasions. The really critical use of the blockage power has been against adoption of panel legal rulings by the GATT Council, and developing countries are more likely to be the losers.<sup>105</sup>

Over the years, among industrialized countries, the US has probably earned the worst grades in this regard.<sup>106</sup> For example, in Nicaragua's 1985 complaint against a politically inspired US trade embargo, the US did not accept a panel until Nicaragua agreed in advance that the GATT could not examine national security claims. It means that such blockage powers have grave consequences for developing countries.

Also out of 14 cases that were blocked but not overruled, the EC were responsible for blocking 5 cases, the US 4, Canada 3, and Nicaragua and Korea 1 each.<sup>107</sup> This is an evidence of what is mentioned above and the fact that developing countries are unlikely to be in a position to influence panel decisions.

#### ***(4) Action by the Council and duration of panel procedures.***

The GATT rules are not directly enforceable in domestic courts of most contracting parties. They also impose no direct legal restraint on government officials, unless and until GATT rules are enacted into the domestic law of the contracting parties.<sup>108</sup> The Council acts on behalf of the disputing parties after receiving reports of breaching the roles. It has a legitimate duty according to the mandate given to it by the Contracting Parties,: "to consider matters arising between sessions of the CONTRACTING

PARTIES which require urgent attention, and to report on these with recommendations as to action;....."<sup>109</sup>

Many disputes lead to a negotiated settlement on the completion of an adopted panel report; but if they are not settled, the report may recommend any of three types of relief. The preferred form of relief is removal of the offending measures.<sup>110</sup> If this is not possible, sufficient compensation to the complaining party may be recommended. If the conflict goes further, the last stage is retaliation by reciprocal suspension or withdrawal of the concessions or obligations under GATT.<sup>111</sup> It is possible to conclude that in legal terms, the GATT articles on dispute settlement system gives the Contracting Parties, who are acting collectively, the right to issue legal rulings.

One of the new positive steps in the panel proceedings is that they are increasingly practising the citation of previous panel reports, and there have recently been references, both by a disputant<sup>112</sup> and a panel,<sup>113</sup> to the principles of general international law regarding the interpretation of treaties. In comparison some<sup>114</sup> believe that broad policy commitments cannot be dealt with effectively by the GATT's panel procedure because they are difficult to translate into precise and enforceable terms. Disputes arising from broad policy commitments could be best dealt with through a process of monitoring, surveillance, consultations and negotiation.

### ***C- HOW DO THE DISPUTE SETTLEMENT POLICIES AFFECT DEVELOPING COUNTRIES ?***

There has been an increase in trade disputes over agricultural trade policies in the GATT system. In the past decade some of these disputes have been successfully resolved in favour of a more open trading regime. However since a substantial part of agriculture trade is shaped outside the effective discipline of international trade rules, the dispute settlement system does not apply to them. In addition, on certain occasions, the parties

have chosen not to adopt the recommendations of the GATT panels established to settle such disputes.

When the GATT system talks about providing security and predictability to the multilateral trading system,<sup>115</sup> one may suggest what could be more important than giving a fair share of benefits obtained from a secure international trading system, to all contracting parties in order to create a better global trading environment.

In order to reach a solution in the case of an alleged violation of rules and disregarding the rights of other contracting parties, the injured party should have recourse to all possible ways for an early settlement of the dispute. On the other hand, to raise a case with the panel, requires information and legal expertise which many developing countries do not have. As stated before there are other important issues to be considered, such as political and economic forces and different influences in the panels proceedings and negotiating tactics that determine the outcomes.

As Jackson<sup>116</sup> states, there are various methods that are employed by governments as well as by private individuals' for influencing the conduct of other governments and private trade activities. The methods can be classified into two main categories as: *power oriented* and *rule oriented* techniques. The power oriented technique is the common practice of many industrial countries in the history of trade relations. By applying it, the stronger party tries to impose its own terms and conditions to influence the conduct of the weaker party or parties.

By contrast, in the second category, when a trade practice is considered as creating discrimination in a market, the recourse to a GATT dispute settlement panel may lead to a legally binding decision by the GATT Council indicating that the trade discrimination concerned must be discontinued. Such a decision can be regarded as a '*rule oriented*' technique in the system.

Hauser<sup>117</sup> also argues that the function of liberal international trade rules is thus



not only to promote a welfare-maximising international division of labour, but also the peaceful, *rule-oriented* rather than *power-oriented* settlement of international trade disputes among governments. The developing countries who have witnessed economic and political conflicts of interest in the agricultural sector may ask from industrial countries to what extent the present practices in the GATT are free of political influences.

While the panel proceedings are based on power-oriented techniques the developing countries are not able to raise their cases and defend their rights. In contrast a rule-oriented system would give them a chance to raise their voices in the panels free of any political intervention. They could benefit from a strong dispute settlement system that not only gives them an equal chance in the panel proceedings, but to some extent it might protect their rights. A means to legal protection would be to employ certain independent economic and legal advisors or consultants to assist developing countries in raising the cases and to assist them in panel proceedings.

The reality is that many developing countries are not able to raise their cases and support them in the panels. This is mainly because of the lack of information and technical expertise, and well trained officials (trade diplomats). In this situation a strong Council could be very helpful by acting more effectively on behalf of developing countries. In addition to the recommendation (or enforcement) of the panels decisions, it could supervise panel proceedings.

Furthermore, since the bulk of trade amongst developing countries mainly takes place in neighbouring borders, they normally do not affect other contracting parties. The majority of disputes related to developing countries is either in market access opportunities for industrial countries or the high level of competition amongst industrial countries in their markets under these circumstances.

It is possible to conclude that, since the establishment of the GATT, its dispute settlement system has improved considerably, but it should be realised that this system

does not clarify who is right and who is wrong, and it is not able to impose any sanctions by itself. The truth of the matter is that GATT is not a juridical system, nor is it an enforcement body. It is not also a court, charged with authoritative interpretations of the system of law. In other words "*It is a system of balanced rights and obligations together with a cumulation of trade agreements based on mutual concessions and on national decisions to agree, or not agree, with other nations*".<sup>118</sup>

It is also possible that in negotiations on the procedure of settlement of disputes in the panels, two types of techniques *power oriented* and *rule oriented*, tend to be used in varying degrees and combinations. The institutions available to states for the peaceful settlement of disputes are usually divided into so-called *diplomatic* and the *legal* means of settlement of disputes.

The resort to political terms for solving such trade disputes is inherently weak because it could bring back *power diplomacy* and weaken the multilateral rules approach. This risk is more serious for smaller trading nations that are less able to impose their terms and conditions on others. A continuation of power oriented diplomacy is also dangerous for the credibility of the system itself. By accepting or even widening this practice, the contractual, legal character of the GATT is undermined and there is a further risk of changing the GATT into an agreement without legally binding rules.

From the legal point of view some argue that the panel reports have no binding force and this could be seen as the weakness of the system. They must first be adopted by the Council on behalf of the Contracting Parties. The contents of a report are not substantively re-examined in the Council, since the Council does not usually act without consensus.<sup>119</sup> In this situation, the '*losing*' party may hold up the adoption of a panel report interminably while it purports to analyze it and to explore possible negotiated solutions with the opposing party.<sup>120</sup>

**CONCLUDING REMARKS**

Agricultural trade provisions of the GATT are subject to many controversial discussions in the system. It was first in 1950s that the major trading powers conceded that agriculture should be accorded a special status.<sup>121</sup> The role of agriculture, in both absolute and relative terms, in the overall development context of a number of developing countries cannot be ignored. For many such countries, agriculture offers the only real possibility for income growth and the generation of foreign exchange earnings. In addition, their prospects for attaining a level of food supplies necessary for the promotion of economic development, also depend upon the development and expansion of their agricultural sectors.

In practice this has meant that agriculture has continued to be protected by various national mechanisms, including import restrictions, and exporting countries have been forced to negotiate voluntary restraint or orderly marketing agreements outside GATT. There is no reason why a multilateral safeguard system should not apply to all goods, including agricultural products.

Considering Article XIX, it seems that GATT gives to the party which imposes trade restriction, the unilateral right both to decide whether a safeguard measure is necessary and if so, whether it technically falls within Article XIX. A supplier state cannot, in the absence of a notification, claim compensation or exercise the right to retaliate under that provision. Its only recourse would be to complain of nullification or impairment of benefits under Article XXIII, a very lengthy process with an uncertain result. Similarly, third countries which may have had to absorb the goods barred from export to the country invoking Article XIX have no standing under that provision to complain about the effects of such trade diversion. They too, must consider the conditions laid out in Article XXIII.<sup>122</sup>

Under the Subsidies Code, industrial countries are prohibited from using export subsidies on non-primary products. However some of these countries do subsidize the

primary product contents of processed products. Although there are differing views on the eligibility of this action, since there has been some proposals that this practice should be eliminated or it should be governed by substantive new rules for export subsidies on primary commodities.

The conflicts of interest amongst the contracting parties in recent years have created some serious threats not only to the dispute settlement mechanism, but also to the continuation of GATT as a guardian of the flow of international merchandised trade amongst its contracting parties.

From an institutional perspective, one may distinguish the GATT from most other international treaties in its dispute settlement machinery, which can culminate in the withdrawal of trade concessions and theoretically gives it the means to enforce its rules and regulations. In practice, the operation of the GATT dispute settlement system has been handicapped by certain elements mainly :

- a)- the lack of clear-cut rules about what happens when a panel's recommendations are not implemented by disputing parties;
- b)- the rule that panel reports must be adopted by consensus, which allows parties to the dispute to block recommendations which would be detrimental to them.

In order to strengthen the multilateral trading system, it is essential to have a more binding enforcement procedure and an appeal body as a last resort to rule on disputes. The next chapter will examines the Agricultural Trade progress in multilateral trade negotiations of the GATT from the early stages until the launch of the Uruguay Round negotiations in 1986.

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**NOTES TO CHAPTER TWO**

- 1 . Keynes, J. Maynard, *Proposals for an International Currency or Clearing Union* (1942), in: Horsefield J.K. (eds.) IMF, Vol. III, (1969), P.6 .
2. Petersmann Ulrich Ernst & Meinhard Hilf (eds.) *The new GATT round of multilateral trade negotiations Legal and Economic Problems*, (Second ed.) Kluwer, London, (1991), p. 48.
- 3.The principle indicates that: "...any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of the other contracting parties."
4. See Magnus Wijman, *Informal Systematic Change in the GATT*, in: TheJournal of World Economy, (1986), pp.39- 42.
5. See: Roessler Frieder, *The Scope, Limits and Function of the GATT Legal System*, GATT Working Paper, (1985).
- 6 . See, Hufbauer Erb. and Stair, *The GATT Codes and the Unconditional MFN Principle*, 12 Law and Pol. Int'l Bus. (1980), p. 59.
7. Frieder Roessler believes that the third principle might be called the principle of *fair trade*. The GATT prohibits export subsidies on manufactured products and also limits the use of export subsidies on primary products. While the GATT does not prohibit dumping and domestic subsidies, all member countries have the right to levy anti-dumping or subsidy- countervailing duties if their industries are materially injured by goods dumped in their market or entering with the help of subsidies. See: Leutwiler, *Trade Policies for a better Future*, The 'Leutwiler Report', *the GATT and the Uruguay Round*, Martinus Nijhoff Publishers, Lancaster, (1987), p.72.
- 8 . See supra No.6.
- 9 . Dr. Khan K.R., *The law of international economic institutions and the principle of universality in the contemporary international legal order*, (Article, unknown citation), p.229. See also, also: Khan K.R., '*The Law of the GATT, Aspects of East West Trade and Expanding Principle of Reciprocity*,' Anglo-Polish Legal Essays, II (1986), pp.113-148.
- 10 . Ibid.
- 11 . For an analytical study of tariff and non-tariff measures effects on domestic trade and welfare policies. See Winters, Leslie Alan '*International Economics* 4th ed. Roman & Allanheld, US, London, (1991) .
- 12 . See Jackson John H. *World Trade and Law of GATT, Legal Problems of International Economic Relations*, Bobbs Merrill Company, (Dec. 1969).
- 13 . See GATT 3rd annual review, GATT publications, Geneva, (1970), p.143.
- 14 . These issues are: 1)-international investment, 2)-disposal of surpluses, 3) liquidation of strategic stocks, 4)-commodity problems, 5)-restrictive business practices, 6)-transport insurance, 7)- market disruption and 8) border tax adjustments.

15 . A short reference to the practical function of these organs is important in the sense that they conduct or influence the decisions in the GATT system. It will help to understand the problems which are discussed as the main arguments of the present thesis.

16 .The individual countries applying the GATT act together as "CONTRACTING PARTIES" ( the use of capital letters is to identify them as entities acting together as a coherent body ), on the basis of procedural rules laid down in the GATT. In each session the Contracting Parties have a chairman, a first vice-chairman and two other vice-chairmen elected at each regular session. According to Article 16 of the 1985 meeting of the Contracting Parties, a simple majority of the Contracting Parties constitutes a quorum.

17 .The Council of Representatives was established in 1960. It is open to representatives of all contracting parties willing to accept the responsibilities of membership. Its meetings are held almost every month, and it will decide certain issues under consideration which are specified.

Since the developing countries have a substantial majority in the GATT system, certainly a full and active participation of these countries in the Council would enable them to have a more active role in decision making authority, influence in the panels and the way on which they carry out their duties and more cooperation with other developing countries for collective action.

18 . This was set up in 1975, and recognised as a permanent GATT body in 1979. Its main task is to facilitate the contracting parties carrying out their duties and their responsibilities, particularly with respect to development objectives and to pay special attention to the interests of the developing countries. Coordination between GATT and International Monetary Fund is also one of the main tasks of this group.

19 . Since the very early stages of the Havana Charter an '*Executive Secretary*' who acts as the chief administrative officer was elected. By the establishment of the GATT this was to remain as the legal base for the GATT secretariat, but this title was changed to that of the present '*Director General*' by the Contracting Parties decision in 1965.

20 . In order to facilitate the task of the GATT, a number of committees were set up, specially as a result of the Tokyo Round agreements. Only a few of these committees are relevant to the subject of the present thesis and will be dealt with in due course. It will be examined how in different rounds of GATT, especially in the Uruguay Round, these committees changed substantially in order to cope with the new negotiating demands in the rounds agenda.

Relating to developing countries, the special session of the GATT at which the Part IV Protocol was adopted, the Contracting Parties established the Committee on Trade and Development. The new Committee, that replaced the Committee III, was given a broad mandate over matters falling within the ambit of Part IV of the GATT.

21 . GATT, *BISD 21 Sup.* P.46.

22 . According to General Assembly Resolution 2297( XXII). See also *ibid.* P.47.

23 .In relation to the provisions of the GATT and their relevance to agriculture, a series of analytical studies by '*Latin American Consultative Group*' carried out called SELA Technical Papers. Among them papers No, 7, 12, 13 ,19 are related to agricultural provisions of the GATT. It is also useful to refer to '*the synoptic table of negotiating proposals*' prepared by the GATT Secretariat for the '*Negotiating Group on Agriculture*' (MTN. GNG/ NG5/ W/150/ Rrv.1).

24 .See *Ibid.* SELA Technical Papers, *Main Elements of the Proposals on Agriculture.*

25 . See, GATT, interpretative note, Ad Article XVI.

26 . According to Annex I to the text of General Agreement, Throughout Article XI, XII, XIII, XIV and XVIII, the terms *import restriction* or *export restrictions* include restrictions made effective through state-trading operations.

27 .It should be realised that Paragraph 1 of Article XI does not contain any direct reference to agricultural produce, (Although agricultural products are considered among other goods), but sub Article (2) clearly exemplifies three important exemptions to Article XI.

28 . See Supra No. 23.

29 .See Supra note 23, No.12 '*Sanitary and phytosanitary Problems Affecting International Trade in Uruguay Round*'

30 . Ibid.

31 . See Section 14.25 of the Tokyo Round Standards Code.

32 . GATT, Article VI(2) (C)(ii).

33 . See Ammendments to Article XI, Paragraph 2(c).

34 . Article XI, para.2, last sub para.; and interpretive note there.

35 . GATT, *Document A 6/ W / Rev.3* , (4 June 1986).

36 . It means, special exceptions allowed for certain industrial countries in the early days of GATT, through '*grandfather clauses*' or mandatory legislation predating GATT, (that should be eliminated and/ or made consistent with new revised rules and disciplines).

37 .Unbound tariffs are those non-tariffs measures whose levels are variable, there was a common desire in the agricultural negotiations on the inclusion of certain measures in this area into the General Agreement, whether they are non-tariff, or quantitative restrictions, but there has been no consensus on how the variable levies may be covered under the GATT.

38 . See Chapter One p.21.

39 . See GATT, *BISD 3th Supp.* (1955) p.32.

40 . See *Multilateral Trade Negotiations, The Uruguay Round, MTN, GNG / AG/ W / 1*, Special Distribution, (24 June 1991), p.8.

41 .See GATT, *BISD 25th Sup.* PP.74-75.

42 . See similar cases in: GATT, *BISD, 30th Sup.* (1982-83) pp.39-43 .

43 . See GATT, *BISD 11 Sup.* p.100.

44 .See Supra note 24, No. 13 '*Analysis of the Global Support Measurement in the Agricultural Negotiations*'.

45 . It is compared with the proportion that might reasonably be expected to fall between imports and domestic production in the absence of any restrictions.

46 . See GATT *Document, AG/ W / Rev.3*, 4th June (1986) P.4.

47 . See *Switzerland Protocol of Accession to GATT, GATT, BISD 15 supp.* (1966).

48 . See supra No. 36.

49 . See GATT, *BISD*, Vol. IV (1969), p.26-27.

50 . The *Penguin Dictionary of Commerce*, London, (1970).

51 . *Selling price* is a combination of actual price plus selling expenses (i.e.)

(i) Transport, insurance, handling, loading and ancillary costs: In any case normal value shall be reduced by the directly related costs incurred for conveying the product concerned from the premises of the exporter to the first independent buyer. The export price shall be reduced by any directly related costs incurred by the exporter for conveying the product concerned from its premises in the exporting country to its destination. In both cases these costs comprise transport, insurance, handling, loading and ancillary costs.

52 . See more in GATT, *BISD 26th supp.* pp.59, 69.

53 . A fair share of world trade could be defined simply as: having fair standard of life. A possible reference to Article 39 of the EC treaty is also useful, see more explanations in glossary of the thesis terms.

54 . See Evans J. 'Subsidies and Countervailing Duties in GATT. Present Law and Future Prospects' 3 International Trade Law Journal (1979), and BISD Vol.IV (1969) pp.68-69.

55 . Ibid.

56 . As Article XVI...indicates such subsidy shall not be applied in a manner which results in the contracting party having more than an equitable share of world trade .

57 . This Code is part of a wider 'Agreement on Interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.' See more, GATT, *BISD 26th supp.* pp. 56, 69.

58 . GATT, *30th Supp. BISD* (1982-83), PP.39, 43 .

59 . Ibid.

60 . See the Australian complaint in *BISD 26th sup.*p.290, and Brizilian Complaint in *BISD 27th supp.* p.69.

61 . Supra no.58 p.80.

62 . GATT, *BISD Vol.IV* (1969), P.26.

63 . GATT, *BISD 28th supp.* p.89-90.

64 . In this respect the US Tariff Act of 1930 did not conform with the requirements of Article VI of the GATT. As it became a signatory to the Agreement on Code on Subsidies, it was no longer possible to call upon the Grandfather Clause.

65 . John H. Jackson and William J Davey, *Legal problems of International Economic Relations* St. Paul, Minnesota, (1986), p.731 on the Subsidies Code.

66 . See Supra No. 58.

67 . GATT, *BISD, 29th Supp.* (1981-82). PP.42,47

68 . *BISD 31st Supp.* (1982-83), PP.39, 43.



69 .See also *GATT, BISD, 30th sup.*

70 .See 3 *ITR 1482* (Dec. 19th, 1986). There are also preparation underway for inclusion of three additional European countries to EC, in 1994 .

71 .As a consequence, even those subsidies that were assessed from the perspective of the international order deserve a favourable judgment; for example, because of their contribution to domestic structural adjustment, they can be affected by countervailing measures. It would require a radical change of the GATT system to make such judgments and enforce them without resort to retaliations. See more in *BISD, 26th Supp.* (1980).

72 . See *GATT, BISD, 26 supp.* p.75-Article 16 of the 1979 Subsidies Code.

73 . See *GATT MTN / NG5/ W/170* at Annex A, p. 19.

74 . More details will be explained in Chapter Five.

75 . The industrially developed countries are able to cope with such regulations since they have the techniques and expertise in how to present their products and how to comply with the new rules.

76 . Cited in Jackson J., *World Trade and the Law of GATT*, (1969), P.559.

77 .See *Ibid* .

78 . See more in K.W. Dam, *The GATT: Law and International Economic Organization*, University of Chicago press, (1970) p.59.

79 . See D. Robertson, *Fail Safe System for Trade Liberalization*, Thames Essay, No 12, Trade Policy Research Centre, London, (1977) p.5.

80 . See, J.M.Finger, '*Ideas Count, Words Inform*' at 1984 'Conference on *International Trade Problems and Policies*,' Published in Monash University.

81 . Tumlr, '*A Revised Safeguard clause for GATT ?*' *J WTL* (1973) PP.404, 406.

82 .The best example of this type of dispute was between Norway and Hong Kong (*GATT L /4959*) and the US dispute with the EC on speciality steel (*GATT L/ 5524/ Add 11*).

83 . This terms will be discussed in further pages in this Section.

84 .See, K. Dam, *Supra* No 76, Chap.6. Also *GATT, BISD Vol. IV*, (1969) pp.46.49. Article XXVII discussions.

85 .*GATT*, Article XXVIII:1.

86 . *GATT*, Article XXVIII:3(b).

87 . See Ad. Article XXVIII (Interpretive Notes) in, *BISD Vol. IV*, (1969) pp. 74-75.

88 .It refers to the obligation of Havana Charter incorporated in Article XXVIII2(b)bis as "*Contracting Parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties that conduct a substantial proportion of their external trade with one another.*"

90- Cited from *GATT, MTN. TNC / 7(MIN)* Sec.B (3). See more Dr. Khan K.R. in *supra* No 9.

91 .This case will be examined in the next chapter (Section on Dillon Round).

92 . See Schott, Jeffrey J.(ed.), '*Completing the Uruguay Round: A Result-oriented Approach to the GATT Trade Negotiations.*' Institute for International Economics Washington, DC Sep. (1990). This disputes was raised in the Uruguay Round, on which US were opposed to EC oilseed policies.

93 . Except paying higher prices for imports of edible oils for some developing countries as the result of overall increase of the world prices, only few developing countries like Malaysia who are oil exporting countries will benefit from higher export earnings.

94 .See Schott Jeffrey J.(ed.) *The Uruguay Round: What Can Be Achieved ?* In supra No. 92, p.11.

95. The Contracting Parties agreed, in January 1987, that negotiations on trade in goods shall be carried out in the context of 14 Negotiating Groups (GNG). From a legal point of view there are a total of thirty relevant provisions in the GATT relevant to this issue.

96. See J. Jackson, '*The Crumbling Institutions of the Liberal Trade System*' , Journal of World Trade Law, (1978) p.93-98.

97. It is one of the basic means of resolving disputes peacefully and serves the purpose of achieving agreed solutions among the conflicting parties.

98 . If the disputing parties consent to the intervention of a third party with the aim of contributing to their settlement of a dispute. It may be offered by a state or international organisation on the basis of its own initiative.

99 . It is similar to good offices, but the mediator here has a more active participation. While the mediator may act on his own initiative or respond to a request from one or both parties, mediation can take place only with the consent of the disputing parties.

100 . The involvement of the third party is here requested in order to provide the disputing parties with an objective assessment. They may agree in advance to accept as binding the report of the selected individual entrusted with the establishment of facts.

101 . It take place at the request of one or both disputing parties and it can be distinguishable from mediation by the fact that the third parties' intervention is on a formal legal and institutionalized basis.

102 . As it was discussed, in comparison to similar international bodies, the existing GATT dispute settlement procedure explicitly recognizes the possibility of bilateral and multilateral consultations, good offices, conciliation, working parties, panels of experts, bilaterally agreed dispute settlements and Council decisions as available means for settlement of dispute in the GATT framework.

103 . For more details and examples, see: *BISD Vol.II*, (1951) p.35 and GATT Doc. L / 580.

104 . This will elaborates more in the perspective for developing countries in Chapter Four.

105 . For example out of 57 GATT legal ruling between 1975 and 1989, at least 17 cases was identified in which the power to block the adoption of a panel ruling was used in a significant way.

106 . An example is a case challenging the US tax device called Domestic International Sale Corporations, which lasted from 1972 to 1984, where the US refused to proceed unless companion cases involving other countries were tried at the same time, and unless the Panel

included tax experts. See *op. cit* in note 4.

107 . Such blockage has occurred at all points of the process. Governments have refused or delayed their consent to the creation, terms of reference, or membership of the panels with some frequency. In the absence of such obstruction, panels can be established and fully operational within three to four month after a complaint is filed.

108 . In the US, some state courts have held that the GATT is directly applicable to state governments; there has been no authoritative ruling by the US Supreme Court on the issue.

109 . See GATT, *BISD 9th Supp.* (1961) p. 8.

110 . See, The discussion of Netherlands Measures of Suspension of its Obligations to the US in GATT, *BISD, at 1st Supp.*( 1953) p.32.

111 .See Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 1979, (I/4907), in *BISD 26 supp.* (1980), p.216.

112 . Report of Panel on Value -Added-Tax (VAT) and threshold, *BISD 31 S/247* (1985), para 12.

113 . Report of Panel on Canada -measures affecting the sale of gold coins, L /5863, (1985), para. 53.

114 . See for example Nyerges Janos, in introduction to '*Tangermann Stefan & William Miner*' Discussion papers series. No. 3 *Negotiating Stronger GATT rules for agricultural trade Washington*' D.C (1990).

115 . See GATT, *MTN. TNC/ 7 (MIN)*, Sec.B(3).

116 .See *Supra* No. 12.

117 . Hauser H., '*Foreign Trade Policy and Foreign Trade Law-The Function of Rules for Trade Policy Making*', in D. Dicke and E.U. Petersman, eds., *Foreign Trade in the Present and in a New International Economic Order*, (1988).

118 . Malmgren, Harald B. '*Threats to the Multilateral System*' in Cline, William R (ed.) *Trade Policy in the 1980s*, Washington, D.C. Institute for International Economics, (1983).

119 . It is because, although the GATT established a one-nation one-vote system, (See GATT Article XXV:3), it has traditionally operated on the basis of consensus. See also E. MacGovern, book (Bibliography) p.24.

120 . ITC Dispute Settlement Study, *US.International Trade Commission*, Publication No.1793 pp. 58-61.

121 . See more on K. W.Dam, *Supra* No. 85 , p.260.

122 .Bronckers, M., *Selective Safeguard Measures in Multilateral Trade Relations*, Kluwer,(1985) Chap.II, p.85.

## CHAPTER THREE

A CRITICAL EXAMINATION OF THE TASK OF SEVEN MULTI-LATERAL TRADE NEGOTIATIONS OF GATT TO RESOLVE AGRICULTURAL TRADE PROBLEMS; THE PARTICIPATION AND ROLE OF DEVELOPING COUNTRIES IN THESE ROUNDS.



Artistic expression of trade war between Japan and USA, by KAL 1987, taken from Hillman Jimmye and Robert Rothenberg, 'Agricultural Trade and Protection in Japan, Thames Essays,' Trade Policy Research Centre, London, (1988) Cover page.

## Introduction

**Why have concerns about unfair trade risen to the forefront today? A conjunction of several factors drives these concerns. But if these forces have to be understood, assessed, and, for the most part, declared as hazardous to the health of the world trading regime, it is necessary to analyze the role of free trade vis-à-vis fair trade.<sup>1</sup>**

How has the GATT, particularly its policy towards developing countries, reached the present stage ? This Chapter examines the treatment of agricultural trade problems in the GATT multilateral trade negotiations from as early as 1947 to the launching of the Uruguay Round (UR) in 1986, in a chronological order. In two main sections, the Chapter deals with six early rounds; but, because of the importance of agricultural trade discussions on the Tokyo Round negotiations agenda, the second Section is devoted mainly to this Round. An important intent of the present chapter is to find out why agricultural trade issues were neglected or ignored during those long years, and what consequences the developing countries faced.

It is also essential to find out why agricultural trade issues are at the centre of many international conflicts and disagreements and to discover why over the past forty-six years the contracting parties were not able to take substantial steps to tackle the outstanding backlog issues. Was this because of the inherent nature of the GATT system in tackling agricultural trade issues, or the powerful political influence of major agricultural producers and exporters that are mainly industrial countries? Lastly, why have fundamental reforms in the agricultural trading system never been addressed directly by these negotiations ?

## **I. THE FIRST SIX ROUNDS OF MULTILATERAL TRADE NEGOTIATIONS.**

Since industrial countries played a substantial part in those negotiations, the role of industrial countries' policies and the nature of agricultural trade problems were linked from the early stages of the GATT Agricultural Trade negotiations.

As a result of world wars, most European countries employed a form of direct central governmental management of agricultural production and distribution policies. Such policies came into effect at the same time as the Americans stepped up their price support systems and controls. Later the US Congress broadened the scope of price support legislation<sup>2</sup> by making supports mandatory for a number of non-basic commodities, including dairy products and authorized the Secretary of Agriculture to provide support for other products, at his discretion.<sup>3</sup> Consequently most of these policies were developed without regard to GATT or international trade rules, at a time when domestic agricultural industries and economies were very different than at present. Latterly, with pressures for opening up of borders to foreign commodities, and for a variety of other internal and external economic reasons, national agricultural policies have not been able to exist without considering the situation of outside world.

For a proper understanding of the development of agricultural trade issues in the GATT, developments will be dealt with in chronological order. This will help us assess the contracting parties' attempts to make every effort to create an international arena as the base for their trade negotiations .

### ***A - GENEVA ROUND, 1 (1948)   qqq***

The first session of periodic gatherings of the GATT member states started in Havana in March 1948.<sup>4</sup> Later in the same year, at the second session held in Geneva, the contracting parties disposed of the remaining components of the post-Havana revisi-

ons of the General Agreement, and decided to conduct another round of tariff negotiations in the following spring.<sup>5</sup> These sessions are considered to be the first Round of GATT multilateral trade negotiations.

One of the standard practices during the initial stages of GATT was for the leading purchasers of a product to negotiate reciprocal concessions directly with the leading supplier. These concessions would then be generalised to all contracting parties of the GATT. As a result, in the first Round of trade talks, among the twenty-three participants in the negotiations, a total of 45,000 concessions or similar agreements were negotiated.

In this Round agricultural trade issues were negotiated amongst other issues (such as industrial goods). No specific treatment, except that indicated in the original text of the General Agreement, was given to agricultural commodities, and ultimately there was no particular committee or group allocated to negotiations on these products. In this respect there was no significant progress in consideration of the agricultural trade interests of the developing countries. In the course of the Round, there were efforts that led to the conclusion of an international wheat agreement, but owing to some disagreements, in practice, the Agreement was not successful .

### ***B- THE ANNECY ROUND (1949)***

Begun in April 1949, this had tariff negotiations as one of its main aims, to allow the remaining industrialised and some of the key developing countries to negotiate for joining as new GATT contracting parties. It was quite successful.<sup>6</sup> As a result of tariff reductions in this Round, levels of tariffs were reduced substantially,<sup>7</sup> exemplified by an average reduction of tariffs in the United States of 35%.

Since the developing countries had been excluded from reciprocity in the rounds, little motivation existed for industrialised countries to enter into negotiations with developing countries' representatives. Any apparent motivation was further reduced by the effective exclusion of agricultural products, important to many developing nations,

from the GATT system.<sup>8</sup> It must be realised that since the industrial countries' policy require at least a minimum level of economic, political or social interest in any bilateral or multilateral deal, there was no motive to come to agreement with developing countries. This was one of the main reasons for supporting the exclusion of agricultural trade from the Annecy Round negotiations' agenda .

The principle of reciprocity that is embodied in countless texts adopted and applied at international level, such as the Havana Charter; is not necessarily considered as constituting an obstacle to preferential practices. One might then conclude that the lack of interest of industrial countries to promote their economic and trade relations with developing countries is not so much due to acceptable legal reasoning but as a result of their own specific economic and trade interests. These however do not promote the interests of developing countries.

### ***C- TORQUAY ROUND (1950-51)***

Despite a record of consistent disappointments regarding agricultural trade negotiations in the past rounds, especially on the part of developing countries, many countries made agricultural negotiations on fundamental reforms one of their top priorities in their policy making procedures. The Torquay negotiations were generally considered successful as more developing countries joined the GATT system, bringing the total to 38 countries.<sup>9</sup> Some 8700 concessions were negotiated, yielding tariff reductions of about 25% comparing with 1948 levels.<sup>10</sup> Regarding agricultural trade negotiations, the situation was almost the same as in the previous round. There was some hope that the newcomers who joined the GATT would put more pressure to liberalise agricultural trade, but the desire of these countries was again overshadowed by the decisions of industrial countries who dominated the negotiations.

### ***D- GENEVA ROUND, 2 (1955-1956)***

The disadvantaged position of developing countries continued in the fourth mul-



tilateral round of trade negotiations held in Geneva. It involved a large number of contracting parties. However, the resulting concessions given by the US as a major player affected only a small percentage of its dutiable imports from any country except the UK, which had failed to conclude any agreements during the preceding negotiating round at Torquay.

The dominant role of the US in the negotiations cannot be ignored. Although the number of countries with which the US reached agreement was quite considerable, the resulting tariff reductions affected only 16% of US dutiable imports.<sup>11</sup>

It was in these years that under the US Public Law 480 (The Food For Peace programme under the US Agricultural Trade Development and Assistance Act of 1954) the US disposal of surplus cereals through food aid to developing countries was started. Such an elaborate plan brought large scale disruption in the world market during the 1950s and 1960s and, as a result, many of the large agricultural exporting countries such as Australia suffered considerably. Australian interests were clearly set back, and Australia lobbied for the incorporation of a remedy into the GATT.<sup>12</sup> On the other hand, the US entered into special commodity agreements on agricultural products outside the GATT system. These agreements had considerable effects on the agricultural exporting countries as well as developing countries. Regarding the overall position of developing countries, the situation was almost the same as in previous rounds.

After the completion of the Geneva Round in 1958, the '*Harberler Report*'<sup>13</sup> recognised two basic elements at the basis of all agricultural policies in Europe and the US: stabilisation and protection. By examining the various methods chosen by countries to implement these two elements, the report criticised external protection as a source of instability in world trade. It also argued that the exports of developing countries were lagging behind the growth of world trade generally and placed an important part of the responsibility for this on the policies of the industrial countries. It is possible to conclude that, since in those years most of the developing countries were subject to industrial

countries' political and economic dominance, they were not able to raise their voices. Later, to some extent, this balance was changed more in favour of developing countries, but benefited only a few of them.

The findings of the *Harberler Report* led to the creation of three committees; Committee I was to convene a further tariff negotiating conference; (not subject of the thesis). Committee II was to consider the improvement of the agricultural trade situation of developing and least-developed countries<sup>14</sup> by reviewing the national agricultural policies of member governments. This committee began by consulting the contracting parties and its main mandate was :

a)-assembling data on the use of non-tariff barriers by the contracting parties to support domestic agriculture income; and b)- examining the effects of these measures on international trade in agricultural products; and, c)- suggesting procedures for further consultation between all contracting parties on agricultural policy issues.<sup>15</sup> The third and the most important result was the establishment of GATT committee III,<sup>16</sup> relating to developing countries and their development objectives, including some issues relevant to agricultural trade.

The Committee also identified five fundamental barriers to the trade of developing countries as: i)- customs tariffs, ii)- quantitative import restrictions, iii)- other non-tariff barriers, iv)- revenue duties and internal taxes, and v)- trade barriers affecting export of tropical products.<sup>17</sup>

It should be realised that many countries of the present developing world were then in the early stages of independence from colonial powers and had no strong voice in the early rounds of GATT to participate more actively and to have better gains from international negotiations.

### ***E- DILLON ROUND (1960-61)***

The Dillon Round negotiations created an opportunity to tighten agricultural trade rules in the GATT, before the highly protectionist European Common Agricultural

Policy (CAP) rules emerged. The CAP rules were in their final stages of creation in the 1960s. This opportunity was essentially lost. The negotiators were preoccupied with reducing the common external tariff created by the EC for manufactured products. In such a situation most of the agricultural issues were left to the side in a series of '*stands-till*' agreements.<sup>18</sup>

Perhaps one of the main reasons for setting aside agricultural trade issues was the fact that the industrial countries, as the main players in the early rounds, had no imminent interest in trade of agricultural commodities in comparison with industrial goods. This was mainly because of the strong waves of industrialisation in the western world and their undisputable supremacy over the mass production of industrial products. Perhaps in such an environment there was no need to compete in agricultural markets.

### ***(1) The industrial countries' policies and their effect on developing countries in the Dillon Round.***

During the drafting of the GATT text, the US negotiators obtained the inclusion of Article XIX. This Article closely followed the language of an earlier bilateral US-Mexican Agreement<sup>19</sup> and permitted the unilateral withdrawal of a concession if it resulted in increased imports that caused or threatened serious injury to a domestic industry. In the US-Mexico agreement, the US obtained a general clause to permit it to withdraw or modify a tariff concession that resulted in serious injury to an American domestic industry. This was treated as an escape clause.<sup>20</sup> Later, in the US Trade Agreements Extension Act of 1951, the Congress insisted on incorporating detailed criteria and procedures governing the administration of this escape clause. In addition, the American administration gave the Secretary of Agriculture special powers and responsibilities regarding perishable agricultural products similar to those given upon the President's request to the Tariff Commission.<sup>21</sup>

The criteria which the Americans applied in the escape clause regarding Article XIX provides a clear example of how industrial countries are able to raise restrictions

or withdraw or modify tariff concessions already given to developing countries, where they themselves determine or measure the level of serious injury. Such voluntary withdrawal is a source of instability, since the developing countries are not able to have long term investments in their agricultural production for trade purposes. There should be more detailed criteria for clarifying the state of injury, otherwise any industrial country may withdraw the given concessions at any time.

**a- Determination of serious injury**

One of the ambiguous terms in relation to developed and developing countries was in regard to the question of '*serious injury*' to a domestic market in dispute cases. This was a controversial area between the developed and developing countries for many years. The developed countries requested that criteria be applied in the determination of serious injury of particular concern for them. They required that:

action by developed countries be taken, more frequently than in the past, on the basis of low-priced imports; in other words the price level would tend to become the sole factor for such action.<sup>22</sup>

The first US confrontation with the newly framed EC farm program started during this Round. The prospect of the application of variable levies to US imports, previously restricted only by tariffs, was gradually. The first tangible demonstration of the effect on trade came shortly after that. It was at the time when the Community issued its legislation regarding poultry products.

The application of new legislation in accordance with the EC CAP and against US decisions had a sharp and considerable effect on US trade and provoked American retaliation,<sup>23</sup> marking the start of a long and complex conflict between two industrial competitors. It has continued to affect agricultural trade policies of developing countries up to the present time.

It was in the same Round that the US negotiators were required to operate under trade legislation allowing them to discuss at most a 20% tariff reduction, and forcing them to conduct the negotiations on a laborious item-by-item basis. It was by

proceeding on this basis that US negotiators managed by the end of the Round to secure what constitutes today the single largest trade concession ever granted to the US in the GATT, a '*zero-duty*' binding on EC import of oilseeds.<sup>24</sup>

This action has reduced the use of Community grains as cattle feed within the EC boundaries and has intensified EC grains surpluses and consequently increased the use of export subsidies, therewith raising the cost of grain support. In order to reverse this effect, the EC implemented an oilseed policy that encouraged the production and domestic use of EC oilseeds via the payment of subsidies to EC oilseed processors who purchased domestic seeds at a high target price and crushed the seeds for domestic use. This policy brought such a substantial increase in EC oilseed production that in the course of one decade a fivefold expansion occurred. The oilseed case was the biggest in terms of trade value and concessions, neither the American nor the EC negotiators realized the grave consequences which would later emerge for EC farm producers.<sup>25</sup>

The case also clearly demonstrates another consideration, in the sense that agricultural trade problems acquired a long standing nature in the GATT. The oilseed case had been a live subject in many past rounds and was still, among the leading controversial cases in the GATT UR of multilateral negotiations. Another major conflict regarding the US and the EC was over '*guaranteed access*' for the US to EC markets. For the US, the question was whether to complete the Dillon Round on the basis of uncertain assurances<sup>26</sup> by the EC for its traditional export commodities to the European market, or whether she should insist on obtaining new binding commitments and thus possibly cause the Dillon Round to collapse. In this situation, the conflict with Europe was settled on the basis of two so called '*standstill agreements*' designed to protect US GATT rights.<sup>27</sup> The US Kennedy administration, decided to conclude the Round without insisting on further new commitments.<sup>28</sup>

## **(2) Developing countries' agricultural trade situation in the Dillon Round.**

When examining the agricultural trade situation in the Dillon Round, certain results

can be identified :

a)- Despite the fact that agricultural trade issues were raised and discussed in these negotiations and certain decisions emerged, these issues were still overshadowed by negotiations relating to manufactured products of vital interest to the industrial countries, as having special priority to be negotiated, as opposed to the agricultural commodities of developing countries.

b)-The Round was characterized primarily by item-by-item negotiations for the reduction of tariffs. Very little attention was given to the complex and ambiguous area of non-tariff barriers. It was the task of the Kennedy Round to address these issues.

The highly sensitive and protectionist policies applied to agricultural products in industrialised countries markets<sup>29</sup> were another area of concern. The agricultural trade issues were, however, set aside. It is interesting to mention that out of 4400 tariff concessions (covering \$4.9 billion of merchandise trade) made in the Dillon Round, a low proportion were related to agricultural products, since only 160 of them were considered as items of particular interest to developing countries.<sup>30</sup>

Although many items were produced both by developed and developing countries, the difference in the figures show how the negotiations dealt more with the interests of the industrial rather than of the developing countries. It is important to ask how it could be possible to reach a balance between the interests of all the conflicting parties.

In the light of a variety of serious discriminations in force against developing countries' exports, it is not easy to answer this question. The discriminatory measures are based mainly on a wide range of modern protectionism such as: rules of origin, the degree of processing, as well as quantitative restrictions, internal taxes, state trading, monopolies and other similar restrictions, such as mixing regulations and price support programmes. These are identified as the main trade obstacles in industrial markets faced by developing countries who look for market access for their agricultural products and

raw materials.<sup>31</sup> Such obstacles would apply either directly or indirectly to many agricultural commodities, during the processing stages, and would have included issues such as: quantitative restrictions, internal taxes and support policies.

A balance of interests means that the industrial countries should realise the nature of the difficulties facing developing countries in trade relations with the industrial world, and try to eliminate or minimise their adverse effects.

#### ***F- THE KENNEDY ROUND (1963-67)*** <sup>32</sup>

The Kennedy Round paid more attention to agricultural trade problems by adopting a resolution on 6 May 1964, at the meeting of the trade negotiation committee at ministerial level. In relation to agriculture, it was declared that:

The committee, while reaffirming that the trade negotiations shall provide for the acceptable conditions of access to world markets for agricultural products in furtherance of a significant development and expansion of world trade in such products, noted that it has not yet been possible to formulate agreed rules to govern, and methods to be employed in the negotiations. In view of the importance of this subject to the success of the negotiations, the necessary rules and procedures shall be established at an early date.<sup>33</sup>

In addition, the drafting of general arrangements on certain products such as cereals, meats and dairy products was a major step in consideration of the agricultural trade problems. Regarding the less-developed countries, there was more emphasis on their participation in the negotiations. The committee realized that every effort should be made to reduce barriers to exports of less-developed countries and agreed that this consideration should particularly be borne in mind when approaching to the question of exceptions.

Some commentators believed that the entry of developing countries to the negotiations could be treated as a turning point, since it paved the way for their future participation within the multilateral trading system. Opposed to this view were those less-developed countries participating in the Round who issued a statement indicating

their disappointment over the scarcity of benefits that they had received. One of the elements of disappointment was their failure to achieve a reduction or elimination of duties on particular products of interest to them, especially tropical products, and the continuation of non-tariff barriers in the developed countries' markets.<sup>34</sup>

In response to this criticism, the GATT Secretariat prepared an analysis of the value of concessions granted by major developed countries to less developed countries. The analysis showed that the Kennedy Round actually reduced duties on almost 60% of imports from the developing countries into the markets of the major industrial countries, and that almost 90% of these reductions were greater than 20% percent, with almost half of the reductions greater than 50%.<sup>35</sup>

Tropical products also received particular attention for the first time in the course of the Kennedy Round negotiations and seven groups of tropical products were identified:<sup>36</sup> They covered a wide range of tropical products, but owing to difficulties of having a proper definition of these products, certain categories overlapped with temperate zone products such as citrus fruits, olive oil, and other agricultural products such as rice.

From the less developed countries' point of view, major shortcomings were the absence of reductions in duties on various tropical products on which they really are dependent and expected greater gains. It should also be noted that the agricultural products and raw materials demanded by industrial countries were mainly selective. They were products that were either not produced in industrial countries, or there was a shortfall of production in industrial countries' markets; and lastly, the production costs were too high in comparison with imports from third world countries

The United Nations Commission on Trade and Development (UNCTAD) did its own analysis, finding that average tariff reductions on products of interest to the less developed countries were smaller than those of interest to developing countries.<sup>37</sup> It supported the idea that under those circumstances the poor countries were not able to



gain any substantial advantages in the GATT system. Either they were not represented on many international committees or, when represented, they lacked negotiation techniques, skills and a proper knowledge of the management of the market. As a result, under the general circumstances governing their day to day economic policies, they were and continue to be unable to make any significant gains in multilateral trade deals.

### ***(1) The inclusion of Part IV of the GATT***

One of the important events of Kennedy Round in favour of developing countries was the inclusion of Chapter IV. Until 1965 the principal GATT Article dealing with the problems of trade and development was Article XVIII. Later in November 1964, Part IV added three additional article to the text of General Agreement to deal mainly with '*Trade and Development*' objectives and to attract more participation of developing countries in the system. The other reason was to secure the interests of developing countries which happen to have important interests linked to agricultural trade. It is important to examine the general effects of this inclusion on the developing countries together with its positive or negative effects on their economic interests in general and on their agricultural trade in particular.

Since the majority of the GATT members are developing countries, the system cannot ignore their interests, but to what extent was it successful in securing an equitable share in international markets for them? One may ask why the interests of developing countries were not considered in the earlier stages of establishing the GATT system. The answer lies in the fact that, in the early stages of the GATT, there were only a small number of independent third world countries party to it, and among them very few developing countries. The majority of existing members now counted as developing countries were at the time still under the sovereignty, protection or administration of European countries. This is why, even after gaining independence, the virtual exclusion of agricultural commodities from the tariff negotiations kept these countries on the margin of multilateral trade negotiations.<sup>38</sup> On the other hand since

many of them did not actively participate in the system, they were not able to raise their problems and defend their rights in the negotiations. More details and the effects of the inclusion of part IV will be explained in chapter IV of the thesis.

## ***(2) Industrial countries' policies***

Unlike many other major tariff negotiations in the pre-GATT period,<sup>39</sup> the more active participation of contracting parties in the Kennedy Round, especially in agricultural deals, was encouraging.<sup>40</sup> For example, during the first phase of the Kennedy Round negotiations, the number of US negotiated bilateral agreements in agricultural products with other countries was twenty-two, in comparison to thirty-two bilateral agreements in the course of the thirteen years prior to GATT (1934 to 1947).<sup>41</sup> It is a clear indication that the GATT and the Kennedy Rounds were providing a relatively important framework for such negotiations, especially vital for the economic interests and administration of the US. On the other hand, there is evidence of an overall increase in the number of agriculture and commodity agreements. One may ask to what extent the developing countries were affected by industrial countries' deals and secured a fair-share of economic interests in the bilateral arrangements and whether these could be considered as a success for them.

Metzger<sup>42</sup> believes that the enactment of the US Trade Expansion Act of 1962, and her concern about the enlargement of the EC, and the establishment of the EC CAP were interpreted as one of the main reasons for initiating the Kennedy Round. The Round led also to the conclusion of a reasonable number of US bilateral agreements with other countries, especially with EC member states. It also emphasised the importance of the agricultural sector in the US economy. On the other hand, it was the first time that agricultural trade issues were treated as an integral and effective element in the negotiations.

**a- The EC 'Mansholt Plans' in 1963.**

One of the main efforts of the EC Commission at the time was to resolve both the internal and external deadlocks over agricultural policies known as '*Mansholt I and II*' Plans.<sup>43</sup> The first plan proposed the introduction of agricultural negotiations in the Round and established a *Common Community Prices* for cereals. It was a kind of device that politically facilitated the reduction procedures for the member states whose prices were supposed to be reduced in order to reach a common price level. The main mechanism was to compensate from Community funds those farmers facing losses or hardship.<sup>44</sup> The EC Commission tried to persuade all EC member states to agree to the first plan, but the second plan, '*Mansholt II*' was the subject of some bargaining in the Council of Ministers which led to delays for the final approval. The debates on the second plan continued until the extent of the policy difference between the EC and other negotiators became clearer. The US opposed the EC views for alteration of the margin of support in alliance with the world changes of price. The EC response was that the exporting countries could avoid any increase in the Community's levy if they discharged their obligations to observe the reference price and to avoid offering products at lower prices.<sup>45</sup>

At a bilateral, level there was a decision in principle by Italy that fruits and vegetables, hitherto excluded from the CAP, would receive '*Community preferences*' comparable to those given to CAP products. Although such internal difficulties in the EC proved to be short lived, they created a ground for optimism, and as a result some individual proposals were submitted.<sup>46</sup>

Among them was an EC proposal<sup>47</sup> which attempted to bring agricultural products into the negotiations and pay more attention to them. This proposal was based on the belief that governmental intervention in production and support of agricultural produce distorts free competition in world trade. Broadly speaking, it had two major elements:

a)- a mechanism through which the level of support provided by each contracting party to its farmers could be measured; b)-a way to bind the existing level of support for providing the basis for future negotiations on agricultural commodities.<sup>48</sup>

In other words, two distinctive features could be found in the EC proposal for negotiations on agricultural products. First, a method of measuring the margin of protection or support provided in each country to its agricultural producers. Second, binding existing margins at the negotiations on customs duties.<sup>49</sup>

Measuring the level of support given to agricultural producers could be treated as an assessment mechanism comparable with the guaranteed price given to domestic producers and the price for the product on the international market. Such a system of support measures provided a basis for future negotiations on the level of agricultural support. However, this system suffered from two major defects. The first one was that it ignored the protection afforded by tariffs and non-tariff barriers. The second was the assumption that the world price represented the cost of production. In other words, it ignored the impact which domestic agricultural programmes and the use of export subsidies can have on world trade.<sup>50</sup>

According to Evans,<sup>51</sup> after further clarification, it became clear that the EC negotiating plan was not in fact a proposal for negotiating the '*margin of support*'. It was not a negotiation but rather the freezing of the *status quo*. And the *status quo* to be frozen was not the '*margin of support*' but rather the level of remuneration to domestic producers. In other words '*the margin of support was simply another name for variable levy.*' It was also a base for further clarification and discussion in respect of the level of support to domestic agricultural producers in the Tokyo Round.

## **(2) Other agricultural trade deals in the Kennedy Round**

The International Wheat Conference was held under the auspices of the United Nations Food and Agriculture Organization in Rome (1967). It was attended by representatives of fifty-two nations. On the basis of US and other industrial countries'

initiatives at this conference, the International Grain Agreement was established.

The International Grain Agreement (IGA) comprised two main elements: the Wheat Trade Convention and the Food Aid Convention. Despite many controversial arguments in implementing these agreements, both conventions were subject to some strong criticism, too extensive to be fully discussed here. The principle objection to the first Convention concerned its price range and its side effects. The minimum price indication was said to be too high because it was very close to the corresponding average export price of the past five years prior to the Convention.<sup>52</sup> The other objection was that the high minimum price would benefit France by reducing the subsidy required to export French wheat surpluses, thus lightening the cost of CAP for grains.

Antagonists of the Wheat Trade Convention argued that US markets in the developing countries would be hurt by the minimum prices. The US stood to lose its commercial wheat markets. World wheat production could be stimulated by high minimums, and these would compete with the exports of traditional suppliers. It was also argued that higher prices would reduce commercial purchase capabilities of the poorer countries. The rejection of the IGA at the time by the Communist states, especially the ex Soviet Union, was another stumbling block.

The signatories to the second part of the IGA, that is the Food Aid Convention, committed themselves to supply certain amounts of wheat and other coarse grains, or the cash equivalent, to certain receivers. The industrialised countries depending on their economic or production capacity, allocated a certain amount of food aid to third world countries.<sup>53</sup> Criticism was made of the selection criteria applied to determine aid recipients. If such decision were to be made by donor countries, geographic, colonial links and potential reciprocal benefits might overly influence by excluding some poor countries completely from such aids. Another question concerns the manner in which aid may affect other sectors of donors' aid programmes or their existing commitments. One of the US authorities at the time nonetheless defended such mood stating that :

....By diverting surpluses from the commercial market the program will help us maintain our access to the markets of importing countries and reduce the pressure on export markets.<sup>54</sup>

This is a mere indication that such food aid is not free of economic or political ambitions by US as well as other industrial countries.

***(3) The overall results of the Kennedy Round negotiations***

It is important to realise that at the end of the Kennedy Round, 30% of the dutiable imports of the leading participants were left untouched by the latest tariff reductions, while almost one-third of the reductions on the remaining imports were less than the full 50%. Similar to those of earlier rounds, the principle equating the binding of a low tariff with the substantial reduction of a high tariff had failed to survive intact in the realities of tariff bargaining.

In this situation, in the course Kennedy Round, the across-the-board principle was seriously compromised.<sup>55</sup> On the other hand, the GATT Director-General at the time, Mr. Wyndham White, suggested that future tariff negotiations could usefully take the form of attempts to achieve global free trade in specific industries.<sup>56</sup> The main question at the time was whether this could be done in a single sector, since the elimination of all tariffs in a specific industry generally does not by itself satisfy the principle of reciprocity, and the members of the world trading community are supposed to demonstrate any disposition to de-emphasize that principle. At the same time, there were other ways to achieve reciprocity by linking two or three sectors together including agricultural commodities in a single '*package*'.

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## II. THE TOKYO ROUND (1973-79)

To what extent did the Tokyo Round (TR) achieve anything new beyond the ground covered in previous negotiating rounds, mainly with respect to agricultural trade of particular interest to developing countries?

In examining the developing countries' position and efforts for the possible evolution of agricultural trade regulations in the TR, it is not possible to reach a conclusion unless different elements of negotiations are carefully examined. A chronological review of the events regarding the developing countries' participation and of their agricultural trade performance is also required.

### *A- TOKYO ROUND NEGOTIATIONS*

It was during the 28th session of the Contracting Parties in November 1972 that the Japanese delegation's suggestion for holding a special meeting at ministerial level was accepted.<sup>57</sup> Such a meeting was scheduled for the following year in Tokyo to set directions for the negotiations.<sup>58</sup> This led to the collective US, EC, and Japanese call for the launch of a new round of multilateral trade negotiations. The US administration took the initiative for the preparation of this new round, aiming to deal with the important subject of non-tariff barriers. Some commentators believed that in this round American officials were more tolerant than in previous rounds towards negotiating agricultural trade issues.

The seventh GATT round was launched in September 1973 in Tokyo, by the Tokyo Declaration. This Ministerial Declaration set out a broader agenda and established more ambitious goals than any other multilateral trade negotiation in the GATT. The other distinctive feature of the TR, in the light of previous rounds, was the participation of non-GATT countries as well as contracting parties in the negotiations. The main objective of the Round was the elimination of most effective non-tariff

barriers,<sup>59</sup> but owing to the special nature and wide scope of such barriers, it was necessary to investigate to what extent the TR negotiations would succeed in eliminating such non-tariff barriers and achieve its initial goals.

### ***B- THE AGRICULTURAL TRADE SITUATION AT THE BEGINNING OF THE ROUND***

The period after the Kennedy Round (1967 onwards) was a period of vacuum and confusion. The Round had left unfinished business, recognized as such in the adoption of the GATT Programme of Work in November 1967.<sup>60</sup>

During the Kennedy Round negotiations, there were some moves among developing countries to remove barriers to trade between themselves.<sup>61</sup> The participation of 33 countries in those negotiations proved to be a step towards liberalisation of trade in the third world countries.

#### ***(1) The publication of the Pearson Report on developing countries.***

The '*Pearson Report*' of the Commission on International Development was published in 1969. The Report emphasised the significance of negotiations in the GATT system among developing countries, and recommended the conclusion of wide-ranging agreements extending to all developing countries. It also stressed that developing countries should devote as much effort to save their mutual trade, as to securing better access for their primary and agricultural products to industrialised country markets.

### ***C- SPECIAL CONSIDERATION OF DEVELOPING COUNTRIES' INTERESTS.***

More than any of the previous rounds, the TR was intended to consider the special needs of developing countries who demonstrated their interest by participating in the negotiations in large numbers. In comparison with earlier rounds, when only 20-30 developing countries participated, the total number of participants in the TR rose to 100. The increase was attributable to greater participation by developing countries.

It should be noted that there were different reasons to explain why the number



of developing countries had increased. One reason could be the realisation of the importance of GATT in the international trade arena, and the growing independence of a number of developing countries from previous colonial rule and the participation of these countries in free market economy systems.

It is clear that the mere increase in number of participants could not by itself induce an improvement in the quality of the negotiations nor a swift change of industrialised countries attitude towards developing countries. Participation in the system could not mean that any participant would get its equitable share in the prevailing system. It can be guessed that what the developing countries hoped for was an increase in the number of participants with common problems and goals, on one hand, and their effective participation in the decision-making machinery of multilateral trade negotiations, on the other, leading to more favourable treatment for trade in products of interest to them, namely agricultural commodities.

Lastly, there may be certain criteria for assessing the negative or positive results of such a participation. The main criteria concern a positive increase in the overall volume of the participants' trade. By participating in the system, developing countries should have more free access to other markets. And, lastly, they could face less non-tariff barriers in their trade deals, especially in competitive industrialised countries' markets.

#### ***D- MINISTERIAL DECLARATION GUIDELINES***

The TR presented an opportunity to review and improve the working of some of the fundamental provisions of the GATT. 'The Tokyo Declaration of GATT Ministers',<sup>62</sup> adopted at an early stage, became the basic constitutional document for Multinational Trade Negotiations (MTN), calling for 'the expansion and ever greater liberalization of world trade' and to 'achieve benefits for the international trade of developing countries.' Six relevant subject areas were on the negotiation agenda.

1)- negotiations on tariffs, 2)- reduction or elimination of non-tariff measures, 3)- reduction or elimination of barriers to trade in selected sectors, 4)- the adequacy of the multilateral safeguard system 5)-agriculture, and 6)-tropical products. The declaration also provided for the establishment of a Trade Negotiations Committee (TNC) to *'elaborate and put into effect detailed trade negotiation plans and to establish the negotiating procedures,'* and to *'supervise the progress of the negotiations'* <sup>63</sup>

The other noteworthy step was that the industrialised countries did not expect strict reciprocity from the developing countries and that the least developed countries received special attention regarding their economic situation.<sup>64</sup>

### ***E- THE MAIN ELEMENTS OF AGRICULTURAL TRADE NEGOTIATIONS***

The leading question for developing countries was whether the negotiations would deal effectively with their international trade problems, especially regarding trade in agricultural products.<sup>65</sup> In this respect a preparatory committee chaired by the Director General of the GATT, was set up to formulate the ministerial meeting.<sup>66</sup> The committee was not able to resolve the extent of special and differential treatment to be accorded to developing countries; the question was left for discussion in the ministerial meeting in September 1973.

The technique which was used in the first stage of the preparatory committee was the collection of basic documentation and information to facilitate and to find a solution to agricultural trade problems. The products that count as most prominent in international agricultural trade were the subject of attention in the early stage of negotiations. Eight-sub groups were formed for cereals, dairy products, meat, vegetable oil & oilseeds, fruit, vegetables, wine and raw tobacco. Later the work was extended to all other agricultural products.<sup>67</sup>

The next task was to concentrate on measures which affect imports and exports such as tariffs, variable levies, centralized trading & quantitative restrictions; and measures that affect production. The negotiations led to a broad spectrum of suggestions

as to how the principal problems in agricultural trade might be dealt with. These included a wide range of topics that led to controversial discussions in negotiations, and also covered and influenced specific measures relating to production, exports and imports of the major trading countries.<sup>68</sup>

### **(1) Agriculture groups in the Round**

The Agriculture group in the TR was divided into three sub-groups in order to deal with cereals, meat and dairy products, as three important categories of products in the agricultural sector. The negotiations on these commodities were discussed under three headings :

- i)- stabilisation of markets and prices;
- ii)- access to supplies and exports;
- iii)- measures for developing countries.

One of the aims of the agricultural group was '*to seek mutually acceptable solutions to the problems peculiar to international trade in agricultural products.*'<sup>69</sup> The above issues were normally discussed as a starting point for policy attitudes in negotiations; but the assumption was that the negotiations themselves would be able to proceed only at the level of commodity details.<sup>70</sup> Perhaps a successful outcome of the agricultural trade negotiations rested on the balance of solutions in agriculture and other negotiating fields. In order to reach a conclusion, it is possible to start the analysis of the main elements of the TR negotiations.<sup>71</sup>

### **F- TOKYO ROUND CODES OF CONDUCT AND DEVELOPING COUNTRIES.**

Owing to the fact that in the TR there was no formal mechanism for drafting agreements, the progress achieved during the negotiations could be treated as having an *ad hoc* nature. This format of negotiations made it difficult to predict what sort of discussions would be on the agenda in order to prepare for an effective participation in the negotiations.

The formal documents which emerged from the TR were two protocols to the GATT dealing with tariff reductions, and nine '*codes*' some of which were referred to

as '*agreements*'<sup>72</sup> and others as '*arrangements*'.<sup>73</sup> From a legal point of view, these agreements are not formally connected to the General Agreement and they were usually adopted to bring the results of the rounds within the GATT system. Six of the so-called codes that were initiated in the TR were more relevant to developing countries interests. They set the scene for more specific and detailed rules on subjects that had been covered by the General Agreement only in general terms. Considering that these codes provide some form of reference or special treatment for developing countries and even some of them directly include agricultural trade problems, it is important to examine them in more detail.

Since only a small number of developing countries became signatories to these codes, industrial countries were disappointed with the outcome. It is important to realise that the codes are in addition to an '*agreement on technical barriers to trade*' whose scope of coverage includes both agricultural and industrial goods. Some codes with direct or indirect relevance to developing countries and their agricultural trade issues will be explained below as follows:

**(1)- The Dumping Code:**

The main aim of this code is to prevent contracting parties from selling their products in other markets at a price lower than those in the home market (the place of production). The code also defined the conditions under which an anti-dumping duty could legitimately be imposed by an importing nation. Article 13 of the code discourages industrial countries from imposing anti-dumping duties on exports from developing countries.<sup>74</sup>

This can be regarded as special and favourable treatment for developing countries, enabling them to sell their industrial and agricultural processed products in industrial countries' markets without facing anti-dumping duties. At the same time it must be realised that, owing to lower production costs and cheap labour in developing countries, they may be able to produce cheaper products in comparison with industrial countries. Hence, the question of dumping is among the controversial areas of North-South trade dealings.

**(2)- Code of Customs Valuation:**

The Code instructed the GATT contracting parties to use as the primary valuation test for customs purposes the actual price paid or payable for goods. This was to prevent fraudulent invoices from being presented at the borders of developing countries. In addition, there is provision for technical assistance as to how to implement the code and to help these countries introduce greater flexibility to regulate their international trade systems. The main objectives of the Customs Valuation Code were:

to elaborate rules for the application of GATT provisions in order to ensure greater uniformity and certainty in their application, and to provide for a fair, uniform and neutral system for valuation of goods for customs purposes, precluding the use of arbitrary or fictitious customs values in conforming with commercial realities.<sup>75</sup>

**a- The Customs Valuation Code and its interest for developing countries.**

Customs valuation deals with the method used for determining the value of imported goods for purposes of calculating duties.<sup>76</sup> Despite existing standards, there was a considerable need for uniformity between states, since often customs valuation constituted an obstacle to imports,<sup>77</sup> owing to the general lack of expertise and market intelligence among the developing countries. The acceptance and implementation of the Customs Valuation Agreement by these countries in the TR would mean, in some cases, the elimination of another form of restrictive practices that affect their trade with the outside world. From a practical point of view, it means that the practices followed by some countries to determine value on the basis of domestic prices in the exporting country or on the basis of domestic prices in the importing country, pose special problems to the developing countries' agricultural trade.

The practice of levying duty on the basis of current domestic value in the exporting country operates particularly to the disadvantage of developing countries as, in many cases, there is no direct relationship between the prices prevailing on the domestic markets and the prices at which developing countries sell their goods on the

global markets. Practices of including in their dutiable value those customs duties already paid on products of which the goods have been relieved by the exporting country, are also particularly disadvantageous to developing countries. In their case, the general level of customs duties is relatively higher than that in the industrial countries. The Agreement expressly eliminates the possibility of marking valuation adjustments for protective purposes in the case of imports from so-called low-price producers.

Furthermore, two distinctive provisions may be found in favour of developing countries. First, the flexibility in delay in the application of computed value method for a further period of three years. The second provision was concerns the technical assistance for developing countries with a view to helping them to set up new valuation systems based on the Agreement provisions. As a result, the industrial countries would furnish, on mutually agreed terms, technical assistance to developing countries that requested such a service from them.<sup>78</sup>

One of the main difficulties for developing countries is the lack of knowledge of different dimensions of international trade, as issues related to customs valuation are very complex to deal with. Technical assistance in this field would seem most valuable. If the contracting parties are seeking for greater uniformity in the area of customs valuation, they have no choice except to assist their weaker partners to regulate their customs valuation tests. At the same time, they should try not to confuse them with wide, complex and unnecessary customs regulations nor protect them against customs tricks that are in force in industrial countries borders such as fraudulent invoices.

### **(3)- Government procurement code:**

A considerable market for imported goods involves the participation of governmental corporative bodies. Sometimes governments impose restrictive conditions that restrain import competition. This may be in the form of preferences for local goods within certain price parameters (e.g. giving preference for local goods unless the

imported goods are more than 15% cheaper). As state policies and local governments sometimes become restrictive towards the informal practices rather than written legislations. Article III:8 of the GATT<sup>79</sup> to some extent authorises the discrimination by governments in their procurement contracts.<sup>80</sup> (i.e. it allows discrimination in purchase of grains for internal consumption.) The scope and ingredients of the code are related to governmental procurement from the domestic market and its impact on international competition. In order to safeguard their balance of payments position, the developing countries may invoke various exceptions from the code, embodied in Part III.<sup>81</sup>

The agreement on government procurement was also designed to secure greater international competition that accordingly results on more effective use of tax revenues and other public funds through the application of commercial considerations when governments procure for their own purpose.<sup>82</sup>

It also contains provisions on special and differential treatment for developing countries, defined so that parties to the Agreement may properly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries. Such an approach may safeguard their balance-of-payments position, and help the promotion or development of these countries economies through regional or global arrangements among themselves.<sup>83</sup>

In addition, compatible with the provisions of the Government Procurement Agreement, parties to it may undertake, in the preparation and application of laws, regulations and procedures affecting government procurement, to promote more quantities of imports from developing countries, bearing in mind the special problems of the least developed countries and those at low stages of economic development.

#### ***(4)- Import licensing code:***

Import licensing requirements in some countries frequently involve time consuming, needlessly complicated and often expensive procedures. Generally it is

possible to say these requirements are an annoyance to the local importers and foreign exporters in their trade exchanges. The agreement in this area was designed to minimise the use of import licensing procedures as an obstacle to trade. It provides certain guidelines, in order to simplify and harmonize the procedures available for importers to be able to obtain the required licences. The lack of such a system can be treated as an obstacle to international trade, especially in developing countries and can constitute another non-tariff barrier to trade.<sup>84</sup>

If a developing country, in its bilateral trade dealing, requires an import licence and if obtaining such a licence may drive that country to go to a lengthy process of obtaining that permission, the resulting situation may force the country to give up hope and stop the procedure because of bureaucracy involved. This causes disruption to the free flow of trade between countries, and consequently certain measure is taken in pursuance of provisions of the Agreement for simplification of licensing procedures and for making them more transparent. It should lead to a considerable reduction in the number of obstacles which these countries may face in their multilateral trade deals.

**(5)- The standards code:**

There are other technical barriers that are capable of interrupting the flow of international trade. They are easy to implement and difficult to deal with. The Agreement on Technical Barriers to Trade or the Standards Code contained a number of provisions which aim to deal with the special problems facing developing and least developed countries in their trade relations.

Four common forms of such technical barriers are: 1)- health (sanitary and phytosanitary) regulations, 2)- safety regulations 3)- environmental regulations and 4)- the obligation of the members to provide national and nondiscriminatory treatment to imported products especially those of developing countries. Most of the provisions have been incorporated into the Agreement on Technical Barriers to Trade, on the basis of the specific proposals made by developing countries.



The Standards Code also contains a number of specific provisions proposed by industrial countries. Among them Article 11 deals with technical assistance to other parties and provides for advice on the preparation of technical regulations especially to the developing countries. Similarly, sub Article 11.5 provides that:

parties shall, if requested, advise other parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers, if they wish to take part in certification systems operated by governmental or non-governmental bodies within the territory of the party receiving the request.

In order to emphasise special and differential treatment for developing countries, Article 12 contains such a requirement for '*special development, financial and trade needs*' and recognizes the fact that :

developing countries should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

Furthermore, assurance was given to LDCs by international standards bodies that they will consider preparing standards on products of special interest to their economies. Upon the request of particular LDCs, the provisions of Article 12.8a, the complete waiver of obligations under the code, was granted for a limited time period. It is possible to conclude that as in the case of other codes, the developing countries were exempted from certain obligations clashing with their development, financial and trade needs.<sup>85</sup> Thus, the Agreement on Technical Barriers to Trade contains provisions to deal with special problems that developing countries confront in their overall trade performance. It should be noted that most of these provisions have been incorporated in the Agreement on the basis of particular proposals made by developing countries.<sup>86</sup> This is a clear indication that developing countries were playing a more effective role in the TR negotiations in comparison with previous rounds.

The legislation implementing the Standards Code was more complex, but achieved essentially the same result. The Code requires national governments to ensure

that technical standards do not operate in certain specified ways creating unjustified barriers to trade.<sup>87</sup> Furthermore, in the case of federal states such as the US, the Code makes national governments responsible for the activity of local governments and nongovernmental bodies, through a provision using the same words of GATT Article XXIV:12, requiring national governments to comply with the obligations of the Code.<sup>88</sup>

**(6)- Subsidies Code :**

In April 1979 the Subsidies Code was concluded to guarantee that, on the one hand governmental internal subsidies do not act as a distorting element in international trade, and on the other, countervailing measures by importing countries do not unjustifiably frustrate international trade. Export subsidies are numerous; but an exemplifying list for them was added in an Annex to the Code,<sup>89</sup> concerning: exemptions, remissions (negligent), deferral (suspension) of direct taxes (income taxes) or social welfare taxes (e.g. social security) on exported goods (as examples of the subsidies code).<sup>90</sup>

In addition to achieving the general aims of '*the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT*' called '*Code on Subsidies and Countervailing Duties*', the developing countries had two particular objectives in mind for the negotiations:

- 1)- to ensure that the importance of subsidies, including export subsidies, in their industrial and development programmes was fully recognized;
- 2)- to avail of an adequate liberty to undertake that such a subsidy performance could be maintained; and to ensure that special and more favourable treatment would also be achieved in respect of the conditions under which the Committee of Signatories may authorize the application of counter-measures against their exports of products subsidized at the production or export stage.

In application of countervailing duties the contracting parties are required to ensure that the imposition of countervailing duties is in harmony with the provisions of

Article VI of GATT (i.e. includes a material injury test). The definition of material injury provides that the determination of injury should be based on the objective examination of two essential elements:

- the volume of subsidized imports and their effect on prices in the domestic market for like products; and
- the consequent impact of these imports on domestic producers of such products<sup>91</sup>

It is possible to conclude that the Agreement on '*Interpretation and Application of Articles VI, XVI and XXIII*,' acknowledges that export subsidies may cause injury. Furthermore, it recognizes that these are an integral part of the economic development processes of developing countries, and that governmental intervention in the economy, by using financial support measures, should not be considered as subsidization in developing countries. These countries are not subject to the commitment made by industrial countries, not to use export subsidies on industrial products.<sup>92</sup> The Code on Subsidies and Countervailing duties however, *inter alia*, provides that developing countries should endeavour to enter into commitments to reduce or eliminate export subsidies when their use is inconsistent with their comparative and development needs.

#### ***G- SOME OVERALL RESULTS OF THE TOKYO ROUND CODES***

It is worth noting that the Agreement on subsidies and Countervailing Duties covered subsidies for both industrial and primary products including agricultural, fisheries and forestry products. The definition of the methods concerning export subsidies on primary products, possibly providing the exporting country with more than an equitable share of world export trade, has been made more explicit in the Agreement.<sup>93</sup>

Dispute settlements arising from the implementation under the Code are handled under existing Articles XXII and XXIII procedures of the GATT. While the composition of the codes was a major step forward for solving many outstanding problems of developing countries, they did not deal with all their agricultural problems. For example, it was somewhat unclear whether agricultural commodities and bilateral export

restraint agreements were included within the coverage of the agreement. The US position was that in the absence of any provision excluding agricultural products in particular codes such as Import Licensing Procedure, agricultural commodities are deemed to be included.<sup>94</sup>

The EC has, in principle, taken the position that agricultural products are not covered, some countries such as Switzerland have supported the US interpretation, but in practice even the EC has on occasion applied the provisions of the code to its agricultural products.<sup>95</sup>

### ***H-HOW DID THE DEVELOPING COUNTRIES BENEFIT FROM THE OUTCOMES ?***

The TR negotiations tried to tackle some real problems of developing countries and to accommodate particular provisions as solutions to subsidies and different measures of internal support. If subsidies are an integral part of the economic development programmes of developing countries, government intervention in the economy through financial support measures should not, *per se* be considered as a kind of subsidization for developing countries. They are not subject to the commitment made by industrial countries not to use export subsidies on industrial products, although they agree not to use such subsidies in ways which exert a serious influence on the trade of another signatory.

The agreement concerning developing countries in the TR, contains provisions for the extension of special and differential treatment to developing countries in cases of third market subsidization. In such cases, it has been proved that account should be taken of the trade and development needs of the developing country concerned, irrespective of whether it is responsible for displacing exports, or whether it is the country whose exports might be displaced in the third market. In the application of subsidies, developing countries retain, within a framework of international surveillance, a large measure of freedom to use both production and export subsidies.

The creation of the codes of conduct marked an important stage in the history of GATT. They manifested the intention of the contracting parties to make the GATT more relevant to the existing international trade environment. But it is also possible to say that the existing regulation system of the GATT was not able to consider the extensive contemporary realities which developing countries were and are facing in their international trade relations.

In order to make the GATT rules more relevant to agricultural trade, the Contracting Parties acknowledged the need to further develop their co-operation in the agricultural sector and to establish an appropriate consultative framework for the negotiations.<sup>96</sup>

***(1) Creating a multilateral agricultural framework for developing countries.***

As with previous rounds, in the TR multilateral trade negotiations, there was a lack of a particular surveillance mechanism to monitor the application of the results of the negotiations relating to the agricultural sector. The main aim was to provide a forum for exchange of information, consultation and for dealing with problems in agricultural trade.<sup>97</sup> It seems that most of the previous decisions were not implemented in practice and one of the assumptions is that the developing countries who were to be the real beneficiaries of these negotiations, were not able to enforce their rights and get benefit from the results of previous negotiations supposed to be in their favour.

There are many reasons for the lack of a monitoring device. One main reason is the deficiency of legal knowledge and expertise in dealing with cases which is a common phenomenon in many developing countries. The other reason was the lack of a strong surveillance mechanism, especially in the early years of the GATT. Lack of co-ordination and joint action amongst the developing countries is another disadvantage. However, it should be noted that, contrary to the old pattern of participation, for the first time in the history of GATT negotiations, a large number of participants expressed their concern in a concrete form in respect of agricultural trade, pointing out that:

the establishment of some fundamental understandings on the conduct of agricultural trade could provide a framework for avoiding continuing political and commercial confrontations in the highly sensitive sector and would lead to an improved level of international co-operation among participants.<sup>98</sup>

The exchanges of information and the establishment of an International Agriculture Consultative Council were considered as useful and practical suggestions of the Agricultural Committee in the negotiations. The participants in the Committee also realised that a broad consensus and improved level of international co-operation in matters affecting agricultural policies and trade were both desirable and necessary. This common desire was reflected in the final text which recommended that the Contracting Parties: "further develop active co-operation in the agricultural sector within an appropriate consultative framework."<sup>99</sup> Such an indication gives more weight to an active co-operation and more consultation among the participants in agricultural trade negotiations. The developing countries could be potential beneficiaries of such consultations which would help develop policy-making mechanisms in international trade negotiations, so as not to rely only on the good will of industrialised countries to assist them.

### ***I- AGREEMENTS REGARDING AGRICULTURAL PRODUCTS***

Agricultural agreements were numerous and negotiated largely to deal with many non-tariff aspects of international agricultural trade often resulting in serious barriers such as quotas.<sup>100</sup> They were negotiated, both at bilateral and multilateral levels. Many aspects of non-tariff international agricultural trade, often the cause of serious barriers (such as quotas), were negotiated among the parties. The other important issue, of substantial importance during the negotiations, concerned the particular problems of developing countries. As discussed before, three sub-groups were established to deal mainly with cereals, meat and dairy products.

The TR created a good opportunity for negotiations on a number of multilateral and bilateral trade agreements. These are related to agricultural commodities and are of particular interest to developing countries. Owing to the wide coverage and relatively technical nature of agricultural trade arrangements, these will not be discussed in detail,

but it would be worthwhile to examine the salient features of the relevant agreements on a sector by sector basis and their overall role in agricultural trade performances in the TR.<sup>101</sup>

***(1) Cereals trade progress in negotiations.***

Cereals occupied a major role in the negotiations. The cereals market holds a key position in agricultural trade, both because of the significance of wheat and rice as food crops in the world and because wheat and maize figure extensively in the diet of farm livestock in many countries. Considering the importance of the cereal trade, the EC has a special cereals regime and this has always been regarded as the cornerstone of the CAP, a position which gives it a special privilege. The US similarly follows the same pattern by having the highest distinctive approach to issues related to cereals. In spite of repeated struggles over other products such as poultry, cheese, tobacco and citrus fruits, the cereals market has always provided the main area of contention in the Euro-American confrontation in agricultural trade.

The high economic and political capacity of the main competitors in the cereals trade points to the scope and importance of cereals negotiations. The main competitors chose different approaches to reach their goals in the negotiations, for example the American position and policies towards the International Wheat Council (IWC) was a matter of concern for many participants. In this area issues involving the competition and market access opportunities in the ex-Soviet Union and Eastern European countries, in addition to the competition in other major grain markets in the world, mainly those of developing countries has always been among the controversial cases in GATT negotiations.<sup>102</sup>

In contrast, the developing countries have had a marginal role in the trade of cereals, with few exceptions, since their main concern has been to provide for the essential needs of their own populations. At the same time, owing to the insufficient use of equipments and application of new techniques, these countries are heavily dependent on natural elements such as water resources and rainfall, especially in the production

of key cereals like wheat, barley and maize. In comparison, the industrial countries have developed their production capacity by using modern techniques and cultivating a higher percentage of farmlands. Many of the industrial countries have achieved surplus production and they have considered the developing countries as potential markets for their surplus cereal exports

### ***(2) Meat products and their unstable import controls***

Meat products too required special treatment in the TR negotiations. The lineup of country interests differed significantly in these products from that of the grain market. In meat products, the major trading problems arose from more or less unconventional import restrictions, usually of a quantitative nature resulting in considerable uncertainty for exporters. For it, the US, and the EC along with Canada and Japan had a portion of the responsibility. Australia and New Zealand were alone among the developed countries with a strong interest in trade liberalisation in meats, while Argentina and a number of other developing countries waited on the sidelines.<sup>103</sup>

Many developing countries are either important producers and exporters or are heavily dependent on the imports of meat products. As such they were interested in the negotiations relating to meat products. Article III of the Agreement relates to information and market monitoring. This Article relaxes the rule relating to mandatory information and in that context, industrial and developing countries participants who were in a position to do so, '*shall consider sympathetically any request to them for technical assistance*'. If the industrial countries are genuinely providing the developing countries with a permanent support on technical information in agricultural trade issues, it is a positive step in the right direction.

### ***(3) Arrangement regarding bovine meats***

The second arrangement related to bovine meats. Its main purpose was to promote the expansion, greater liberalization, stabilization and more co-operation in the international meat and livestock markets. This would evolve by progressive dismantling



of barriers and restrictions to world trade in bovine meats and large animals. In accordance with this arrangement, the International Meat Council was set up,<sup>104</sup> consisting of all participants in the arrangement for further assistance in this field.

Similar to the previous agreement on dairy products, the Arrangement regarding bovine meat emphasised the importance of the process of consultation between participants when problems arise. The International Meat Council will function similarly to the International Dairy Council and is made up of representatives of all participant countries.<sup>105</sup>

In those years, there has been a tendency among developing countries to participate more actively in international meat markets; but the Argentinean lesson, being as one of the first victims of such participation, should be considered.<sup>106</sup> There are some developing countries who have a potential capacity to produce meat with competitive prices in comparison with industrial producers, but their main task should be to develop self-sufficiency in these highly significant commodities.

In addition to some measures on special and differential treatment for developing countries, the access to information provided within the arrangement could serve as a basis for market analyses, thus assisting developing countries with their efforts in the development of production techniques, export facilities, marketing in meat sector. Such a measure could be an important procedure for assisting many developing countries.

#### **(4) Dairy products**

Overproduction of dairy products and the EC's inability to move this onto the international markets on the one hand, and the US political will for liberalizing in some form its own import policies on the other, led to changes in this sector. The Community approach was to argue for commodity agreements covering butter and milk powder (which was subject to a *gentlemen's agreement*) with an international price range. The fact was that the introduction of any international agreement in this sector needed to impose discipline on domestic policies, and specifically on the EC, CAP. It would be an ambitious attempt to regulate what is probably the least satisfactory of the temperate-

zone commodity markets.

It is important to note that the developing countries have no direct interests in dairy negotiations. They more or less rely on their own limited resources; but in the meantime some of them could be considered as potential markets for the modernised mass dairy products from industrial countries. A useful assistance to developing countries would be the use of new techniques in the production and processing of dairy products. An example of these new techniques is the use of biological methods in the production of milk and animal output.

**a- International Dairy Arrangement**<sup>107</sup>

The main objective of the International Dairy Agreement (IDA) was to expand and liberalise world trade in dairy products under stable market situations, in order,

(a) to expand and liberalize world trade in dairy products; (b) to achieve greater stability in world trade; (c) to avoid surplus and shortages, under price fluctuations and, more generally, serious disturbances in world trade; (d) to improve international co-operation in these areas.

Owing to the highly competitive nature and unstable prices of dairy products especially in industrialized countries, any agreement in this area was considered of crucial importance for these countries.<sup>108</sup> The scope of coverage of this arrangement related to fresh and preserved milk and cream, butter, cheese, curd, and casein. The IDA also established an *International Dairy Council* aiming for consultations, information gathering, and the probable extension of coverage to other dairy products. Consequently, the IDA initiated three protocols for fixing minimum export prices, to which adherence was to be on voluntary basis; the three were :

- a)- the Protocol Regarding Certain Milk Powders.
- b)- the Protocol Regarding Milk Fat,
- c)- the Protocol Regarding Certain Cheeses.

Developing countries have little general interest in dairy product trade since most are not able to fulfil their own internal market needs. Some of the industrial countries have emerged in recent decades as mass importers of dairy products. This area may be of

particular importance to industrial countries; but they are always looking for potential markets in the developing world to dispose of their surpluses of dairy products.

### ***(5) Bilateral agricultural agreements***

The bilateral agreements dealing with agricultural commodities are quite substantial. In the present Section some of those dealing with non-tariff measures will be discussed. It is interesting to note that the US is a party to all the eighteen arrangements. In comparison, the EC is a party to only five of them, but both of them are principal players to these agreements.

The question is: why are these two trading blocs always partners to these agreements? The answer lies in their dominant power, especially during the 1970's, together with their international trade policies designed to secure sales of enormous exports with hardly any imports of agricultural commodities. The sheer number of these agreements, especially on the US side, is an indication that there should have been a change of US policy in comparison to earlier rounds. In order to come to a conclusion on this point, we need to draw our attention to the circumstances in which these agreements were negotiated and the underlying benefits of these agreements to the US economy and its prospective counterparts .

- 1 - Agreement between the US and EC on Cheeses.<sup>109</sup>
- 2 - Agreement between the US and EC on Poultry.<sup>110</sup>
- 3 - Agreement between the US and EC on Rice .<sup>111</sup>
- 4 - Agreement between the US and EC concerning High Quality Beef.<sup>112</sup>
- 5 - Agreement between the US and EC on Fresh, Chilled and Frozen Beef.<sup>113</sup>
- 6 - Agreement between the US and Switzerland on Cheeses.<sup>114</sup>
- 7 - Agreement between the US and Switzerland concerning trade on Beef.<sup>115</sup>
- 8 - Agreement between the US and Austria on Agricultural Products.<sup>116</sup>
- 9 - Agreement between the US and Finland Concerning Cheeses.<sup>117</sup>
- 10- Agreement between the US and Argentina on agricultural products.<sup>118</sup>
- 11- Agreement between the US and Australia on agricultural products.<sup>119</sup>
- 12- Agreement between the US and Israel on tariffs and agricultural products.<sup>120</sup>

- 13- Agreement between the US and Iceland on agricultural products.<sup>121</sup>
- 14- Agreement between the US and Portugal on cheeses and meats.<sup>122</sup>
- 15- Agreement between the US and Canada concerning cheeses.<sup>123</sup>
- 16- Agreement between the US and Norway concerning cheeses.<sup>124</sup>
- 17- Agreement between the US and Sweden on different cheeses.<sup>125</sup>
- 18- Agreement between the US and New Zealand on Industrial and agricultural products.<sup>126</sup>

Most of these agricultural trade agreements were negotiated between the US and other industrial countries, but a few with the third world side, although developing countries may not be immune to the consequences of such deals. In other words, in the absence of similar agreements, the US and other industrial countries have no choice except to buy or to exchange their demanded agricultural products from developing countries. For example under the last agreement above "agricultural products agreement between the US and New Zealand",<sup>127</sup> US tariff concessions to New Zealand involved wool, lamb, beef, veal, butter and cheeses. In exchange New Zealand granted concessions on tobacco, rice, citrus products. If in the first place there was no agreement between US and New Zealand, it would allow developing countries to compete with both countries for selling their agricultural commodities.

#### ***(6) US agricultural agreements with less developed countries.***

With less developed countries, the US concluded 28 bilateral agreements, particularly dealing with agricultural and raw materials. Principal concessions involved canned fruits, vegetables and cigar tobacco. Based on TR, MTN reductions, the average duty on agricultural commodities imports from LDCs was reduced to 2.6%. The concessions covered soya-bean products, tallow, fresh fruits and nuts, and poultry.<sup>128</sup>

It is possible to conclude that, although these bilateral exchange agreements to some extent reduced the average duties, they were mainly negotiated to secure the supply of commodities of interest to US industries and markets in exchange for getting rid of surpluses on less developing countries' markets. In other words, these agreements

could be considered as one way of dealing with developing countries, treating the industrial partners as different from developing countries.

### ***J- THE ROLE OF THE UNITED NATIONS IN THE ROUND.***

Parallel to the TR negotiations, in May 1974, the Sixth Special Session of the UN General Assembly adopted the Declaration and Programme of Action on the Establishment of the New International Economic Order (NIEO). The Declaration was an important step for dealing with the real problems of "developing countries which constitute 70 percent of the world production [but] account for only 30 percent of the worlds income",<sup>129</sup> and called for a new order based on equity, sovereign equality, interdependence, common interest and co-operation among all the states "...which shall correct inequalities and reduce existing injustices".<sup>130</sup> There were calls for increased access to markets of the developed countries for products of LDCs', for negotiation of commodity agreements to stabilize prices of raw materials, for the establishment of a link between the prices of exports and imports of LDCs.

The UN attempts through UNCTAD in the course of the TR can be interpreted as reflecting a common goal and desire by the representatives of the international community to prescribe certain rules aiming to assist developing countries. In practice one could investigate to what extent these international identities have secured a proposed equitable share in the world economy for the third world countries.

### ***K- REGIONAL ARRANGEMENTS AND DEVELOPING COUNTRIES IN THE TR.***

One of the major events not to be ignored in relations between developed and developing countries parallel to the TR (1970s'), was the negotiation of the Lome' I Convention between the EC and then 46<sup>131</sup> developing ACP countries in Africa, the Caribbean, and the Pacific region.<sup>132</sup> This Convention was not negotiated under the auspices of the Multilateral Trade Negotiations of GATT, but since on one hand the regional arrangement establishing the Convention could be subject to the provisions of

Article XXIV of the General Agreement and both sides are considered as contracting parties to it,<sup>133</sup> the consequences of tariff exchanges will directly effect the GATT rules.

In October 1975 there was another attempt in Bangkok by the developing countries on the basis of the 1970 experience, for the interchange of tariffs and non-tariff concessions or specific measures in favour of developing countries. The main aim was to enlarge the depth and type of concessions and extend product coverage. The Bangkok Agreement was signed by 7 countries: Bangladesh, India, Korea, Laos, Philippines, Sri Lanka, and Thailand.

In 1977 there was another agreement by five,<sup>134</sup> mostly new industrialised countries in Asia (ASEAN), leading to a preferential trading arrangement. It included long term quantity contracts, preference in procurement by ASEAN government entities, extension of tariff preferences, and the liberalisation of non-tariff measures (NTMs) among the members on a preferential basis. Some important and basic commodities were covered by these preferential arrangements including, rice, crude oil and some industrial goods.<sup>135</sup> Despite the considerable objections from industrial countries, especially the US to the overall trade performance of the ASEAN, and the raising of the graduation concept as against the New Industrial Countries,<sup>136</sup> the ASEAN pact has become a live and *prima facie* evidence of the success of some new industrialised developing countries.

#### ***L- TANGIBLE RESULTS OF THE ROUND FOR DEVELOPING COUNTRIES.***

Regarding the complex and diffuse results of negotiations,<sup>137</sup> the developing countries expressed considerable dissatisfaction. This reaction deserves attention, since the special consideration of developing countries was one of the principal pillars of the Tokyo Declaration.

It is important to realise that in the TR negotiations, the GATT secretariat took a more active role in drafting some proposals on behalf of the developing countries and introduced them to the related negotiating groups. Among the proposals were those for

the negotiating group on agriculture. This shows that the industrial countries have accepted that the secretariat and its officials may play a more active role as chairmen of groups and sub-groups in the negotiations and direct the course of negotiations in a more neutral environment.

In the course of TR, the GATT secretariat established a special '*Technical Assistance Unit*' for the consideration and promotion of agricultural trade performance of developing countries. It was based on four important study elements:<sup>138</sup>

### **(1) Studies about individual countries**

Studies are based on gathering available information from different countries, including those not in GATT and, through a process of clarification and explanation, making full and effective use of the supplied materials. The Technical Assistant Unit concentrated on a careful examination of a variety of available data such as: MFN duties and their binding status within GATT, existence of a levy, where applicable, status under the CAP, and quantitative restrictions, if any. Its main purpose was to reach more accurate practical decisions regarding developing countries.

It must be borne in mind that many organisations try to collect data regarding the present and past trade activities of different countries. Taking into account the time and expense for collecting and upgrading such data, unless there is an effective and practical use of such information, it may not be rewarding to collect them.

### **(2) Tropical products**

Tropical products are of vital importance in the export earnings of many developing countries. The expectation of the Technical Assistance Unit was that there would be many requests for technical assistance in this area. Its aim was to continue extending assistance to developing countries or groups of tropical products producers in the preparation, revision or resubmission of their request lists of concessions, including the identification of tariff and non-tariff treatment applicable to individual products and of trade flows in those products;

***(3) Other products***

There were other product areas of particular interest to developing countries, such as certain fruits and vegetables in fresh and processed form; fish and fishery products; hides and skins and various items in the leather goods sector; and certain wood products. The secretariat assembled data on these products in the form of background notes, covering developments in production, trade, import treatment and other relevant data which could be useful in the context of the negotiations. It covered many agricultural products of particular interest to developing countries.

***(4) Implications of tariff reductions for developing countries.***

The developing countries searched for a clearer procedure for the implications of alternative tariff reductions suggested during negotiations. Since many international concessions in favour of developing countries may end up with the lack of an administrative mechanism for implementing them, it is important to follow a practical procedure to benefit from the deals, otherwise they end up having no tangible implication. There are different comments on the real effects of the TR on industrial and developing countries. Deardorff and Stern<sup>139</sup> measured the overall effects of the TR tariff negotiations under GATT, including certain minor non-tariff agreements as follows:



Table No. 6

The effects of the TR on trade and welfare of the major contracting parties.

	Exports	Changes in	Welfare
	\$b .	Imports \$b.	% of GDP
All countries *	13.2	13.7	0.10
Industrialised countries	13.4	14.1	0.11
UK	1.2	1.2	0.18
France	1.5	1.5	0.05
Sweden	0.4	0.8	0.98
Japan	0.4	0.6	0.08
US	3.3	2.3	0.03
Developing countries	-0.2	-0.3	0.00
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Notes: \* Based on economies as in 1976 - i .e. applying the changes to 1976 economies.

The changes in total exports and imports are not equal because certain countries are omitted from the analysis. The table clearly indicates that the TR negotiations brought to the developing countries negligible or negative achievements. It shows the major domination of the Round by industrial goods rather than by products of interest to developing countries. One major reason could be the general reductions in tariffs which reduce the advantages they reap from their tariff concessions, regarding agricultural trade goods, while the non-tariff barriers they face are not altered.<sup>140</sup>

*M- CONCLUDING REMARKS TO THE CHAPTER*

It is possible to point out that the techniques and procedures developed in the GATT negotiations must be considered in the light of its unique nature as an institution. This applies both to the origins and to the structure of the institution and to the questions that the GATT contracting parties address.

In the seven rounds of multilateral trade negotiations prior to the UR, there was

only limited progress in achieving negotiated trade liberalisation between industrialised and developing countries. Throughout the period in question there has been ongoing debate over the issue of how developing countries should participate in the negotiations.

In the first Round the only achievement was an unsuccessful international wheat agreement. Some positive reforms issued from the second Round, but a proposal for a permanent board to review agricultural trade disputes, '*the international consultative council*,' was quashed. Even the Kennedy Round negotiations were not able to resolve most of the important problems in the agricultural sector.

It was, however, for the first time that agricultural issues were introduced as part of the agenda. Even though the GATT was modified in 1965 to add a special part dealing with developing countries, in order to accommodate their needs, these debates did little to contribute to resolving their problems. The complex issue of non-tariff barriers was addressed during the Kennedy Round, but largely without success. The 1969 Antidumping Code<sup>141</sup> was one of the significant result in the area of non-tariff barriers. This did not give any particular benefit to developing countries, but probably acted as a barrier to the cheap imports of agricultural commodities from developing countries.

The other important factor was that the Kennedy Round deals was largely conducted among industrially developed countries with similar economic structures. It resulted in a significant liberalisation of trade among these countries. The tariff reductions focused mainly on industrial goods as products of interest to industrial countries, rather than on agricultural produce that are the dominant source of export earnings for developing countries.<sup>142</sup>

One of the major moves from the developing countries' side in the Kennedy round was the resolution put forward by 21 developing countries calling for what became known as the '*Action Programme*'. It consisted of the following seven major elements:

1)- a call for standstill provisions to prevent new tariffs and other barriers against exports by developing countries, 2)- elimination of remaining quantitative restrictions by industrialised countries within one year,<sup>143</sup> 3)- duty-free entry for tropical products to be achieved by December 31, 1963, 4)- elimination of tariffs on primary products 5)- reduction and elimination of tariffs on export of semi-processed and processed products from developing countries by at least 50% over three years, 6)- a progressive reduction of internal taxes and duties on products wholly or mainly produced in developing countries, 7)- an annual report to ensure implementation of the Action Programme.<sup>144</sup>

The developing countries tried to practise their rights regarding the waiver under Article XXV (5) of the GATT.<sup>145</sup> In this respect, India, Egypt and Yugoslavia concluded an agreement involving preferential tariff concessions; which was approved under the GATT system,<sup>146</sup> but owing to political reasons, that agreement made no express reference to Article XXV (5) of the GATT.

Consequently under the same waiver, 16 developing countries concluded a protocol in 1971, extending tariff concessions to one another on certain listed items. The industrial countries and developing countries outside the protocol were not able to benefit from these concessions. Later the number of participants rose to 18 countries.<sup>147</sup>

It is possible to say that despite the predominant position of agricultural trade problems in the Kennedy Round negotiations, the results were insignificant compared with the objectives that were set on the agenda of the Round. In comparison, in the TR negotiations, a significant enlargement of agricultural markets was an essential requirement of agricultural exporters. To achieve such an objective, the TR participants had a strong political commitment to negotiate and achieve results on agriculture.

In this respect, some more specific factors distinguish the TR from its predecessors. The involvement of new issues made the negotiating task more complex. It led to the integration of agricultural trade into the set of principles which govern

international commercial relations among the signatory countries of the GATT.

It is possible to conclude that the success of the TR MTN was among the most successful steps in the history of GATT, especially in the drafting of codes of conduct in non-tariff trade barriers, but they were mainly directed towards the industrial countries. The recognition and substantial reduction within the new area of non-tariff measures were considered as one of the success of the Round. The codes too, "have proven to be largely effective, at least in dealing with the trade problems prevalent at the time they were adopted."<sup>148</sup>

The developing countries made tariff cutting commitments in the form of tariff bindings or reduction on \$3.9 billion of their imports. It was as a result of intensive pressures from some industrialised nations that developing countries were forced to reduce their own tariffs. This effort has been promoted by the IMF and the World Bank which have used their policy based loans to encourage such trade liberalisation.<sup>149</sup> It must be borne in mind that the use of such methods by industrial countries to force developing countries to cut their tariffs may bring liberalization to trade, but who is going to pay the cost? Lowering the tariffs and consequent fall of home products may lead to a decline in production and growth of unemployment in the third world.

A large number of states, particularly those with a substantially smaller share of world trade participated in the TR. One of the criteria with which it is possible to evaluate the TR is to determine to what extent the agreements which were negotiated further in the course of the TR, rationalize international trade legislation. It may be that in spite of substantive gains, they contribute to more complexity, confusion, and incoherence in the obligations of the states in international trade.

On this point some serious questions can be raised about the agreements that resulted from the TR MTN. Additionally, it must be emphasized that the new substantive obligations undertaken by parties under these agreements might not be the focus of concern, but rather the relationship of these agreements to existing framework of international trade legislation, particularly, the rules of the GATT itself were

important.

Generally speaking, at the end of TR, developing countries expressed their displeasure at the way in which they had been left on the *periphery* of negotiations. They issued a statement saying they had not been consulted on the "framework of understanding".<sup>150</sup>

On the other hand the TR took some positive steps towards the better understanding of the real problems of developing countries, and certain prominent decisions were directed toward them. The extent to which these changes were implemented and what the real contribution of these decisions will be in terms of prosperity and the advancement of international trade in developing countries is a subject deserving more investigation in the future.

Some positive results of the TR negotiations in favour of developing countries could be summarised as :

a)- The reduction of import duties and other trade barriers by industrial countries on tropical products imported from developing countries. This was considered to be the first concrete result of the TR. Industrialised countries may possibly claim such moves as a sacrifice of their interests in the TR. The fact is that tropical commodities do not bear any threat or competition to the industrialised markets; as a result, they do not deserve to be the subject of solid protectionist measures in industrial markets.

b)- Differential and more favourable treatment, reciprocity and fuller participation of developing countries. The preferential treatment of and between developing countries was recognised as a permanent legal feature of the world trading system. It came under an '*enabling clause*' which includes the provision of a permanent legal basis for the extension of the GSP by industrialised countries to developing countries.<sup>151</sup> Although it was not the first time that a GSP was granted to certain beneficiaries, as in previous rounds they were authorized as a temporary waiver of GATT obligations.

c)- The other important step was giving "*greater flexibility to developing countries in applying trade measures aimed at meeting their essential development needs*".<sup>152</sup>

**NOTES TO THE CHAPTER**

- 1 .Bhagwati Jagdish, *The World Trading System at Risk*, Harvester Wheatsheaf, London, (1991), p.13 .
- 2 . The '*Steagal Amendment*' to the US Commodity Credit Corporation Appropriation Act in 1941.
- 3 .US Tariff Commission Report, on '*Operation of the Trade Agreements Programme*,' June 1934-April 1948, Government Printing office, Washington, D.C.,(1957), pt III,Table 7.
- 4 .See GATT/1/1, Annexure, (First Session Agenda, Feb.18, 1948). The official launch of the Round was in 1947, see GATT BISD, Volume II, (1948-1951).
- 5 .GATT/CP. 2 /6 / Rev.2, Annotated Agenda, (Aug.17,1948).
- 6 .GATT/CP. 3/2 Rev.1 Annotated Agenda, (Apr. 8,1947).
- 7 . More details of discussions on trade barriers can be found in; '*Attack on trade barriers*' published by the interim commission for the International Trade Organisation at the request of the contracting parties to the General Agreement on Tariffs and Trade, (Aug. 1949), p.26. Cited in Hudec, Bibliography List, at p.61.
- 8 . Bhagwati, Kruegar, and Snape, '*Introduction*' 1, The World Bank Economic Review (Sep. 1987) pp.539-41.
- 9 . See GATT /CP.4/1/ Rev.3 Agenda, (Feb.28, 1950). And GATT in Action Sales No. GATT/1952-2 (Jan.1952).
- 10 .Leutwiler, *Trade Policies for a Better Future* , The '*Leutwiler Report*', the GATT and the UR, Martinus Nijhoff , (1987), Lancaster, p.162.
- 11 .See US Tariff Commission, *Trade Agreements Program*, Ninth Report (Washington, D.C., Government Printing office, (1957).
- 12 . See *The Common Agricultural Trade Policy's Role in International Trade* in Special Report No.19, London: Agra Europa, (1983) p. 106.
- 13 . *Trends in International Trade*; chaired by Professor Gottfried Haberler, the final report of panel of experts in GATT, (1958), Cited in Evans J. W, p.119-120.
- 14 .See GATT, *BISD*, 8th Supp. p.121, and 10th Supp. p.135.
- 15 .Ibid.
- 16 . On the bases of the decision taken by the Contracting Parties on 7th December 1961 for the implementation of the previous Ministerial meeting, the Committee met from 19 to 22 Feb.1962 to arrange its programme of work in preparation for a further meeting in April / May 1962.
- 17 .More details of the Harberler report and Committee III will be discussed in Chapter Four of the present thesis as perspectives of developing countries in the GATT system.

18 . These items were mainly wheat, corn, grain sorghum, rice, and poultry. See more information in, Curtis Thomas B.Curtis, Vastine John Robert Vastine, p.24.

19 . This agreement was concluded between the US and Mexico before the establishment of the GATT in 1942.

20 . Escape clause regarding the Trade Agreements Extension Act of 1951. See more in, John M.Leddy and Janet L.Norwood, *The Escape Clause and Peril Point under the Trade Agreement Program*, In Studies in US Commercial Policy, (ed.) Kelly, Jr. Chapel Hill: University of North Carolina Press,(1963) p.124.

21 .The mentioned Act provided, *inter alia* that Tariff Commission "upon request of the president, upon resolution of either House of Congress, upon resolution of either the Senate Finance Committee or the House Committee on Ways and Means, upon application of any interested party, or upon its own motion" must promptly investigate claims of possible injury, report its findings, and make its recommendations to the President. Special powers and responsibilities of the President are also subject to US Tariff Commission, Trade Agreement Programme, Fourth Report, pp.31-32.

22 .See *The Tokyo Round of Multilateral Trade Negotiations* , Report by Director-General of GATT, Geneva,( April 1979), p. 94.

23 .This protectionist EC legislation had been carefully crafted with existing GATT rules in mind, and would therefore prove difficult for the (individual) US negotiators to challenge.

24 . Oilseeds and Products: The crushing of oilseeds yields the joint products-meal and oil - each destined for different end uses. Protein meals from soya beans, peanuts, cottonseeds, sunflower seeds, copra,rapeseed and palm kernels are all used as animal feeds. Vegetable oils from the same products are used primarily in the food industry and for certain industrial products.The demand for protein meals has become the driving force behind the growth in world trade of oilseeds within which soya beans are the most important, accounting for about 75% of world trade in protein meals. Cited in '*agricultural trade with developing countries*' OECD Paris.1984 at p.34.

25 . See more in Tutwiler M.Ann and Rossmiller, George E., *Negotiating Agriculture in the GATT:Getting What You Want* (Paper for the National Planning Association's Committee on Agriculture, Washington, (4th April,1987).

26 .The US demanded that the EC assure a '*guaranteed access*' to its market for their products, especially for most important commodities of which she was the traditional supplier.

27 .This agreement was in respect to corn, sorghum, ordinary wheat, rice and poultry, T.I.A.S. No.5034 (March 7th,1962); and Agreement with respect to quality wheat, T.I. A. S. No. 5135.

28 .Perhaps obtaining new tariff commitments for important US agricultural exports was less significant than completing the Dillon Round.Thus it was decided that the continued development of the EC as a new European entity was more important than assured markets for certain US agricultural exports.

29 .The heavily protectionist market of industrial countries such as the EC and Japan would suffer large relative losses from any unpredicted deal, unless planned and calculated measures were adopted.

30 . See supra note 10, p. 164.

31 .GATT BISD, 13th Supp.(1965); Also, Dam Kenneth w. *The GATT, Law and International Economic Organization*, University of Chicago Press, Chicago and London, 1970.

32 .It was during this period that the GATT was modified (1965) to accommodate the special needs of developing countries, under special and preferential treatment.

35. See GATT, *BISD .13 th Supp.* p.111.

34 .See: Joint Statement by the developing participating countries in the Kennedy Round Negotiations, *GATT press Release, No. 994*, (30th June, 1967).

35 .GATT *Doc.COM. TD/48/ Review. No.1* ( 21th Nov., 1967).

36 . These seven groups were: 1) tropical beverages (such as coffee, tea, cocoa) 2) spices, cut flowers and plants, 3) certain oilseeds and vegetable oils 4) tobacco, rice, maniac and tropical roots, 5) tropical fruits and nuts, 6) tropical wood and wood products, natural rubber and rubber products, and 7) jute and hard fibres.

37 .See *UNCTAD, 2nd. Supp.*(Sep,1967).

38 . Dr. Khan, K.R *International Law of Development and The Law of the GATT*, in F.Snyder and P. Slinn (eds.) '*International Law of Development*': Comparative Perspectives, London, (1988), p.181

39 .These negotiations took place simply in major tariff conferences and resulted in an increase in the number of bilateral negotiations among the participants in negotiations.

40 . See GATT, *BISD, 4th Supp.*(1956), pp.74-76.

41 .US Tariff Commission, *supra* note 3,1st Rep., Part II (1948), PP.6-15,61.

42 . Metzger S. *Trade Agreements and the Kennedy Round*, (1964), cited in Mc Mahon Joseph A, *European Trade Policy in Agricultural Products*, Martinus Nijhoff Publications, London, (1987)..

43 .Dr. Sico Mansholt, was the Commissioner responsible for agricultural trade policy at the time.

44 .See Camps, Miriam. *European Unification in the Sixties, What Kind of Europe*, pp.27-30. From the Veto to the Crisis, Council on Foreign Relations, McGrawhill Book Co. New York, (1966).

45 . See GATT, *MTN 64/ AGR/1*, (19th Feb.1964) p.5.

46 .See GATT, *MTN 64/AGR/W.1*, (Jan.27th, 1965).

47 . See GATT,*TN 64/AGR/1*, (19th Feb., 1964).

48 .See Warley T.K. *Western Trade in Agriculture Products* in Shonfield, (ed.) Montreal University of Guelph, Canada, (1976), p.383.

49 .See *supra* note 47.



50 . See Evans John W., *The Kennedy Round in American Trade Policy*, The Twilight of the GATT, Harvard University, (1971), p. 210.

51 . See *ibid* Evans No. 50, p.211.

52 .See Report of Ad Hoc Subcommittee of the Committee on Foreign Relations, Hearings, *International Grains Arrangement of 1967*, US Senate, (March 26, April 4 & 5, 1968), p.10.

53 . The total industrial countries share was 4.259 million metric tons, of which the US share was 42%, the EC 23%, Canada 11%, Australia, UK, and Japan each 5%.Argentina, Denmark, Finland, Norway, Sweden, and Switzerland also participated.

54 . Statement of Julius L. Katz, in US Committee on Foreign Relations Hearings (March 26, April 4 & 5, 1968), at p.6. Cited in Thomas B.Curtis and John Robert Vastine, Jr. *The Kennedy Round and Future of US Trade*. Washington DC., p. 62

55 . For an impressive study of the Kennedy Round negotiations, see *supra* note 50.

56 .GATT *Document INT (66)576* (Oct.1966), p.3.

57 .See GATT, *Doc.S.R.28/8*, (1972) p. 112 .

58 . See GATT, *Doc. L/3773 /Rev.I, BISD*, 19th Supp.12 (1971-72).

59 .Most of the issues addressed in the Tokyo Round negotiations are analyzed in Hugh Corbet and Robert Jackson (eds.) in, '*Search of a New World Economic Order*', London: Croom Helm, for the Trade Policy Research Centre, (1974).

60 . GATT, BISD, 15th Supp. pp. 67-72 (1966-67). The Council established a Committee on Trade in Industrial Products and an Agricultural Committee ,and reactivated the Committee on Trade and Development's Special Group on Tropical Products.

61 .These are included both tariffs and non-tariff barriers.

62 . Declaration of Ministers Approved at Tokyo on 14th Sep. 1973, *GATT Doc. MIN (73) 1*, *BISD*, 20 Supp.19 (1972-73).

63 . Para. 3. *ibid*.

64 . Paras.5 and 6.

65 .See GATT, *BISD 29th Supp.* and Dam, K , *supra* note 31.

66 .This preparatory Committee, which was established in early 1973 ,discussed the whole range of issues to be dealt with in the ministerial meeting and the subsequent trade negotiations and finally adopted a report and a draft declaration. See *GATT Doc.MIN (73) W/2*.

67 .See GATT, *Tokyo Round of Multilateral Trade Negotiations Report by Director General*, Geneva, (April 1979).

68 .These subjects covered, imports, custom duties, quantitative restrictions, levies, health and sanitary regulations and other measures constituting barriers to trade.

69 . It was one of the suggestions which was raised in the 26th Session of the Contracting Parties. See GATT *Doc. L/3366 (1970)*, *BISD*, 17th Supp. pp.18-19 (1968-70).

70 .This created a problem: 'details' at a commodity level could in themselves contain a sufficient balance of interests for a practical conclusion.

71 .See more in Warely T.K. in '*North American Agriculture in a Changing World Environment*,' Montreal: Canadian-American Committee, (1977).

72 .In GATT documents, the term '*agreement*' have been used to cover both '*agreements*' and '*arrangements*'.

73 .The text of documents could be found in: GATT, *BISD*, 26th Supp. (1980), also a complete text of these codes in page 243 of '*The Uruguay Round: A Hand book on the Multilateral Trade Negotiations*, World Bank (1987) p. 243.

74 . See Agreement on Implementation of Article VI of the General Agreement (Geneva 1979), GATT, *BISD*, 26th Supp. (1980), pp.171-181.

75 . Agreement on Implementation of Article VII of the GATT (Customs Valuation ), 26 March 1979 Art. 21(3). See *supra* No. 67 p.132.

76 .In 1950, the Custom Cooperation on Valuation, an international group, drafted the Brussels Convention on Valuation, and until 1984, more than 100 countries have their systems of custom valuation based on the Brussels Convention.

77 . An example of such occasions is where formal prices are uniformly used for valuation purposes, even when they are higher than transaction price.

78 .Technical assistance in this sense may include *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of the Agreement.

79 . Article III.8 reads, *inter alia*: "the provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale."

80 .See Glick, Leslie Alan, *Multilateral Trade Negotiations: World Trade After the Tokyo Round*, Roman & Allanheld,US, (1984), p.18.

81 .Agreement on Government Procurement, *Part III MTN /NIM/W/211/REV.1*.(5th April 1979).

82 .GATT *BISD*, *supra* No. 67, pp. 136-138.

83 .See: GATT, *BISD*, *supra* No. 67, p.173.

84 .See Agreement on Import Licensing Procedure, *MTN/ NIM/ W/ 231*, (29th March 1979).

85 .See Agreement on Technical Barriers to Trade, *MTN) /NIM/ W/192/ Rev.5*, ( 29th March 1979), Art.12(3).

86 . GATT, *BISD*, *supra* No. 67, p.168.

87 .See Trade Agreements Act of 1979, Title IV, Sections 401-453, 19 US.2531-2573.

88 .See: Agreement on the Technical Barriers to Trade (Standard Code), supra No. 67, Article 6.

89 .See 'Agreement on Interpretation and Application of Article VI, XVI, and XXIII of the GATT', [ known as the Subsidies Code], 12 April 1979, 3 UST.513, T.I.A.S. NO.9619. See also:GATT BISD, supra No. 67. PP.136-138.

90 .See ibid para.g.

91 .See BISD, supra No. 67. p.131.

92 .In case of industrial products the developing countries agree not to use such subsidies in ways which cause serious injury to the trade or production of another contracting party.

93 . See GATT BISD supra No. 67, PP. 129-131.

94 . On the basis of analysis prepared by the US International Trade Commission at the request of the US Senate Committee on Finance, that appeared in MTN Studies No 6, pt. 1, 96 th Cong., 1st Sess., CP 96-27 (Aug.1979) p.300.

95 . See ibid, p. 303.

96 .-GATT, *BISD 29th Supp.16-17* see also *30th Supp. PP. 100-106*, and *31st Supp. P.209*.

97 . A comprehensive review of GATT negotiations on agriculture can be found in T.K. Warely, 'Western trade in Agriculture Products, 'in Andrew Shonfield (ed.), *International Economic Relations of the Western World 1959-71: Politics and Trade* (London: Oxford University Press, for the Royal Institute of International Affairs, vol.2, (1976).

98 .This statement was adopted during the TR negotiations on 13 July 1987, see ibid.

99 . See more in, supra No.67 and No. 96.

100 .See Supra note 94, CP-96-12, at III (June,1979).

101 . A comprehensive analysis of these agreements was prepared by the US International Trade Commission at the request of the US Senate Committee on Finance, and is available in MTN Studies 6, pt.1, Committee Print, 96th Cong. 1st Sess.cp 96-27, at III (June, 1979). See also the same reference (Agust.1979), pp.103-227.

102 .For example the presence of the ex-Soviet Union in the IWC talks added special provisions to the grain talks which were useful for some other countries. For a discussion of the United States and late Soviet Union pact, see Johnson, *The Soviet Impact on World Grain Trade*, London, Washington and Montreal: British-North American Committee, (1977), pp.6-18.

103 . One of the notable issues in these negotiations was the willingness of the ex-Soviet Union to absorb the world surpluses, and it was one of the major factors which in those days prevented a complete collapse of confidence in the meat trade.

104 . Arrangement Regarding Bovine Meat, part one, Art. III, para.1, in supra note 67, p.146.

105 .The main tasks of the International Meat Council are: a) to evaluate the world market situation and outlook; b) to review the functioning of the Arrangement; c) to identify possible solutions for consideration by governments in situations of serious market disequilibrium or threat thereof.

106 . This case will be discussed in Chapter Four in relation to the Argentinean agreement with the EC regarding the sale of beef to the EC.

107 .There were 5 other agreements prior to the international agreement on dairy products which were generally known as agreements on non-tariff measures on international trade.

108 . See 24th Annual Report of the American President on Trade Agreement Program, IDA, Art.I p. 49, and, *Tokyo Round of the Multilateral Trade Negotiations*, Message from the President of the United States, 96th Cong., 1st Sess.423 (1979).

109 . Arrangement Between the US and the EC Concerning Cheeses products.?

110 . Agreements reached in the Tokyo Round of the Multilateral Trade Negotiations, see *ibid* No. 108.

111 . *Ibid*, p. 424.

112 . *Ibid*, p.425.

113 . *Ibid*. p. 427.

114 . *Ibid*. p. 437.

115 .*Ibid* p. 442.

116 . This agreement covered a wide range of products such as different types of cheeses, fresh and chilled high quality beef,..., poultry, nuts, and dried fruits. See *ibid* note, p.465.

117 .In this agreement the US agreed to allow the importation of certain types of cheeses without quotas and bound the quotas on others. See *ibid*. p.491.

118 . *Ibid* p. 499.

119 .These arrangement covered certain agricultural products such as meat, cheeses, chocolate crumb and butter.See *ibid*. p. 507.

120 . This agreement provided a minimum cheese import quotas of 750 metric tons from Israel and made tariff cuts on products of interest to Israel, such as citrus fruits, dates,etc, in return to duty free import of American goods. See. *ibid* p. 523.

121 . It covered Agricultural products such as: Icelandic cheeses and American apples, dried fruits and fruit juices. See more on *ibid*. p. 545.

122 . *Ibid*. p.553.

123 . The Americans agreed to a fixed quota of 2,044 metric tons regarding certain cheeses and free quotas for some other categories of Canadian cheeses, *Ibid* p.564.

124 . See more *ibid*, p.572. Although these agreements were similar to those accorded by Canada, but in practice, any retaliatory action against Canada was subject to prior consultations with that government, whereas in the cases of Finland, Iceland and Portugal there were no such implications.

125 . *Ibid*, p. 597.

126 . The agricultural part of the agreement covered a wide range of agricultural products of interest to both parties. Two example figures are a global quota of 1.3 billion pounds of meat (excluding lamb meat) to US market and the New Zealand cheese quotas at 17,422 metric tons to US market. See more *ibid* p. 447.

127 . See more at: 24th Annual Report of the President of the United State on the Trade Agreement Programme, (1979) p.69-70.

128 . GATT, The TR Multilateral Trade Negotiations II Supplementary Report, GATT/ 1980, (Jan. 1980), p. 37.

129 .*Ibid*.

130 . UN, Issues before the General Assembly of the UN, New York: University Press(1986). And various issues UNCTAD (1986a,1987c,1988a,b,) UNCTAD Bulletin, various issues UNCTAD Proceedings of the UNCTAD Vol. 1 Final ACT and Report 964 p. 3.

131 .The number of these countries has increased to 69 states.

132 .This Convention will be discussed in next chapter of the thesis.

133 . It should be realized that a proportion of ACP countries are still not contracting parties to the GATT.

134 .These countries are Indonesia, Malaysia, Philippines, Singapore, and Thailand.

135 .These include a wide range of products for ASEAN industrial projects as well as products for the expansion of intra- trade among these states.

136 .This will be explained in the Fourth Chapter of the thesis.

137 . Jackson describe them as '*frighteningly cumbersome*', See: *The Crumbling Institutions of the Liberal Trade System*, 12 J. World Trade Law, (1978) pp. 93-96 .

138 .It should be realised that there was another attempt at the time that promoted vigorously by developing countries and led by Brazil, on the base of *Group Framework* that was viewed less enthusiastically by the major industrial countries out of concern, assuming that it might become a vehicle for the rhetoric of the '*New International Economic Order*', The main concern of the group was to consider the reform of the GATT system, particularly as it affected developing countries. See more in GATT / MTN/ No. 17, (1976).

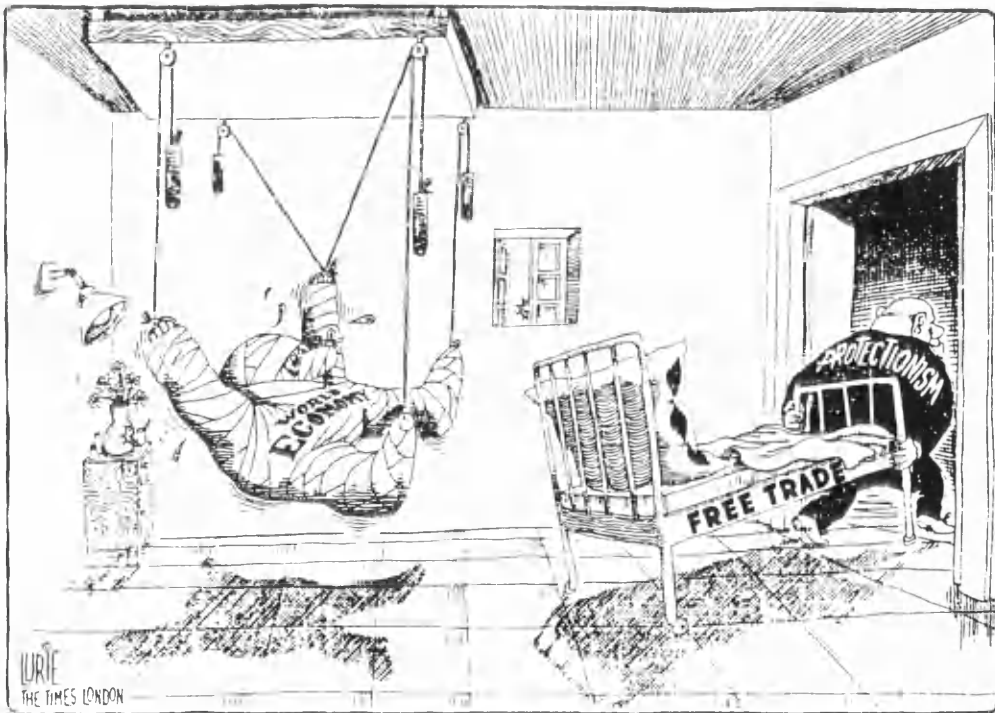
139 . In 1983, Deardorf and Stern made a sophisticated, model based estimate of welfare effects of the TR tariff negotiations. See Winters L. Alan, *International Economics*, 4th ed. (1991).

140 . For more information see: *The World Bank's Development Report of 1987*, World Bank, New York.

- 141 . Agreement on Implementation of Article VI, XVI and XXIII of the GATT, *Doc.L/ 2812 (July 12, 1967)*, reprinted in *BISD, 15th supp.* (1968).
- 142 . Abreu and Fritsch in warley, *supra* No. 48, note that for a sample of eight OECD countries (US, Japan, West Germany, UK, France, Sweden the Netherlands and Belgium) average tariffs fell above 50% in 1950 to around 9% by the early 1970s. These trends accelerated even in the Tokyo Round, see *Ibid* note 140, p.35.
- 143 . Within one year, or not later than December 31, 1965.
- 144 . See more in *GATT, BISD, 13th Supplement;* (1965).
- 145 . Under Article XXV (5), the GATT members may by a two thirds vote, waive a GATT obligation in exceptional circumstances.
- 146 . The GATT decision of 14 November 1968, *BISD supp. 16*, p.17.
- 147 . See ' *Toward a new Trade Policy for Economic Development*', Report by the Secretary General of UNCTAD (New York 1964) p.66, as cited in O.Lang, *Law and its Limitations in the GATT Multilateral Trade System*, Dordrecht, (1987) p.31.
- 148 . Glick *supra* note 80, p.174.
- 149 . See more in; J.M. Finger and Holmes, '*Unilateral Liberalization and MTN,s*' *The UR: A Handbook on the Multilateral Trade Negotiations*, World Bank (1987) p.52.
- 150 . See: GATT, *BISD 29th Supp.* (1983) Also Cable, (1978).
- 151 . See Leutwiler, G. *Op cit*, note 10, p.167.
- 152 . *Ibid*.

## CHAPTER FOUR

### AN ANALYSIS OF THE PERSPECTIVES OF THE DEVELOPING AND INDUSTRIAL COUNTRIES IN THE GATT SYSTEM.



How cartoonist Lurie in The Times, London, saw the issues facing the GATT ministerial meeting the day after it began, on 25 November 1982.

## Introduction

As James Bovard<sup>1</sup> quoted,  
when politicians call for fair trade with foreigners, they almost always hypocritically use a concept of fairness that makes a mockery of the word's normal usage. In exchanges between individuals-and in contract law- the test for fairness is the voluntary consent of each party to the bargain: "the free will which constitutes fair exchanges,"

Before analysing the final round of Multilateral Trade Negotiations, it is necessary to have a full analysis of the existing GATT agricultural trade regime in respect of two distinctive groups of beneficiaries, namely industrial and developing countries. Such an approach seems necessary in order to find the root of the problems existing in international agricultural trading relations. Some of these issues have been identified in the earlier parts of this thesis in relation to; 1)- the examination of the international trade institutions in Chapter one, 2)- the investigation of the agricultural trade provisions in Chapter two and 3)- the review of the task of the seven multilateral trade negotiations on the evolution of agricultural trade in Chapter three. In order to have a comprehensive approach, some repetition of certain issues is inevitable, although the approach taken in this Chapter is analytical.<sup>2</sup>

This Chapter deals with two categories of policies i.e. those of industrial and developing countries. Its aim is to address certain issues such as: a)- the effectiveness of the policies of the two groups in generating a more liberal and fairer global trading system, b)- the effectiveness of the GATT rules and preferential provisions for the economic well being of developing countries, c)- whether these provisions really fulfil the objectives and principles laid down in the GATT system, d)- whether the developing countries have been able to benefit from existing legal provisions or whether there are



still vital obstacles to be tackled, such as lack of legal and administrative expertise. One of the main tasks of the chapter is to compare the two essential trading perspectives in two separate sections seeking a proper solution for agricultural trade policies affecting developing countries.

Section one concentrates on the perspective of developing countries in the GATT system. Since many developing countries lack both a proper and effective policy-making machinery as well as efficiency in their administrative and legal systems, the question is how they may learn from successful industrial countries to improve their trading performance. Can existing programmes of developed countries be recommended as practical models for the agricultural trade performance of developing countries?

When raising such questions developing countries should realise the difficulties of employing industrial countries trading patterns for tackling their existing problems. This is mainly because of their different economic structures so that implementing industrial countries trading patterns is not always commendable.

In section two, after examining the common characteristics of industrial countries' agricultural trade policies and their effects on developing countries, different elements of the three leading industrialised countries policies towards the developing countries are examined. Particular attention is also given to the possible or negative aspects of the existing trading patterns regulating trade between industrial and third world countries.

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## I. DEVELOPING COUNTRIES' PERSPECTIVE IN THE GATT

The main aim of this Section is to focus on the perspective of developing countries in the GATT. It seeks to have a clear picture of the role of these countries in the system by examining the provisions relating to agricultural trade and the effects of previous and current application of GATT regulations in their trade performance and welfare situation.

The Section is divided into eight sub-sections. The first one focuses on the question of '*special and differential treatment*' for developing countries in the GATT. What does '*special and differential treatment*' mean and, more importantly, what is its significance for the various negotiating GATT groups? The second and third sub-section deals with two important articles relating to development objectives in the GATT Article XVIII and Article XXIV. The *Harberler Report* and two important Committees related to it are discussed in the fourth sub-section. The Pearson Report on agricultural trade issues is explained in the fifth sub-section. These reports were followed by two other reports in 1985, '*Leutwiler Report*' and 1987 '*Cable Report*' that will be explained briefly. The inclusion of Part IV to the GATT, its outcomes and the effects of GSP on developing countries are the subjects of sub sections six and seven and the last sub-section examines the clash of industrial and developing countries interests in the system.

More generally this section examines the significance of the provisions that were designed to assist the trade performance of the developing countries in the past. The credibility of the GATT as a fair trading mechanism particularly towards the developing countries will be explored.

***A- THE NEED FOR SPECIAL AND DIFFERENTIAL TREATMENT .***

A key question has always been why developing countries need special and differential treatment. This refers to various rights and privileges given to developing countries contracting parties to the GATT, but not simultaneously extended to industrial countries. Such treatment involves two different criteria. First, the recipients of such treatment have, as developing countries, relatively more freedom to protect domestic markets than industrial countries. Second, preferential terms of access to industrial countries markets are only granted to developing countries.<sup>3</sup>

***(1) The main articles and provisions dealing with differential treatment.***

Developing countries are given special treatment under different articles and provisions of the GATT that may be divided into five different categories: Articles XVIII (governmental assistance to economic development), Article XXVIII:bis(3), Part IV, and the 1979 Framework Agreement known as the Enabling Clause, and the General System of Trade Preferences (GSP).

As stated before (in chapter three) the Tokyo Round had recognised "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of negotiation where this is feasible and appropriate"<sup>4</sup>

***B- ARTICLE XVIII AND ITS REFERENCE TO DEVELOPING COUNTRIES***

It is important to define the terms '*developed*' and '*developing*' countries, since they are sometimes used as if these were inherently distinct and homogeneous groups. In practice, of course, there are many common characteristics to distinguish one group from the other but, at the same time, there is within each group a great deal of diversity in trade interests and levels of economic development. Such a definition seems vital to distinguish who are eligible subjects of special treatment by industrial countries.

The other main question is whether the notion of development is self selective for the countries, or are there internationally recognised criteria for this purpose. It seems that each international organisation has provided a list of developing countries in the light of its own criteria.<sup>5</sup>

Neither in the GATT nor in its relevant context is there any definition of a 'developing country'. In the absence of such clarification, the system functions according to the principle of self-designation: developing countries are those which designate themselves as such.<sup>6</sup> In addition each GATT contracting parties determines which of the countries that claim to be developing it wishes to include in its preference scheme. Behind the question of definition of the term '*developing countries*' lies the question of who should give aid to whom. The mandate given to the Committee on Trade and Development of the GATT includes the task of considering any question which may arise as to eligibility of a member country to be considered a developing country.<sup>7</sup>

### **(1) *The definition of developing countries***

In the 1955 GATT Review Session, Article XVIII was amended in order to make the GATT more attractive to developing countries. In its new version, entitled '*Government Assistance to Economic Development*', it endows contracting parties, "the economy of which can only support low standards of living and [are] in the early stages of development"<sup>8</sup> with extended preferential rights and privileges, on the basis of which these countries "shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Section A, B and C of this Article.

Article XVIII-A, allows developing countries to re-negotiate binding tariffs in order to promote the establishment of a particular industry. A developing country using this provision is expected to offer compensation or face retaliation. Article XVIII-B is in fact the balance-of-payments escape clause for developing countries. Section B of the

Article gives developing countries the more desirable right to use quantitative restrictions in a process for overcoming their balance of payments problems.<sup>9</sup>

Article XVIII-C permits a developing country to apply quantitative import restrictions for infant industries or production structures. It should be realised that there is some similarity between sections A and C of Article XVIII regarding the payment of compensation or retaliation in the absence of a negotiated agreement. It seems that the Article reflected the pre-dominance of the import substitution approach to economic development and has not been particularly helpful to developing countries. According to Dam it has rarely been invoked, even after its revision in 1955.<sup>10</sup>

An interpretative note is annexed to the agreement to explain, with respect to the formula '*Low standards of living and in the early stages of development*', as follows:

1. When they consider whether the economy of a contracting party "*can only support low standards of living*", the Contracting Parties shall take into consideration the normal positional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of such contracting party.

2. The phrase '*in the early stage of development*' is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties the economies of which are undergoing a process of industrialization to correct an excessive dependence on primary production.

It is not clear if this clarification implies that the phrase coincides with, or is broader than, what elsewhere in the GATT is referred to as '*less-developed*' and what in later GATT practice is referred to as '*developing*' contracting parties.<sup>11</sup>

Regarding those developing countries that are involved in '*undergoing a process of industrialization*' or, as they are called, new industrialized countries such as ASEAN, some industrial countries such as the US, have objected that they have graduated<sup>12</sup> from the early development stages and are no longer entitled to developing countries status. This is different from the above mentioned GATT criteria.

It is not the subject of the present thesis to examine these characteristics in more detail; but regarding developing countries' dependence on agricultural trade, it is possible to indicate that in almost all the developing countries, over half of the working people are engaged in agriculture and in many of them at least 75% of the population are engaged in agricultural activities.<sup>13</sup> Agriculture is so dominant in their economy and day-to-day life that any progress in their economies is dependent on rural development. ~~Is~~ developed countries (LDCs) were initially defined in 1971 by the UN General Assembly by using three distinctive criteria; a per capita GNP of \$100 or less; a 10% or less share of manufacturing in the GNP; and a literacy rate of 20% or less.<sup>14</sup> There are other definitions and criteria in other organisation that are not the subject of the present thesis.

#### ***C- ARTICLE XXIV, CUSTOMS UNIONS AND FREE TRADE AREAS***

Regional and other trading arrangements are the main concern of Article XXIV. Such arrangements, in which a group of countries agree to abolish barriers to imports between themselves, have been established in many parts of the world. In Article XXIV, GATT recognises the value of closer integration of national economies through freer trade. It therefore permits such groupings as an exception to the general MFN treatment, provided that certain criteria are met. The main purpose is to ensure thereby that such arrangements facilitate trade among the participating countries without raising barriers to trade with other non-participants.

It is understood that such regional arrangements are a step towards economic development for most developing countries as the main bulk of the GATT contracting parties. They are considered as possible instruments for more co-operation and liberalisation of world trade.

In practice industrialised countries benefited from these opportunities by having the upper hand in negotiating these arrangements. In the industrial world the US and EC

have the biggest share of bilateral and regional arrangements with other countries, among them: "Group Seven" as one of the most powerful trading pacts having regular negotiating sessions for joint action,<sup>15</sup> but the conformity of it under Article XXIV is ambiguous since it does not have the characteristics of a regional arrangement. The major arrangements could be categorise as: i)- the European Economic Area (EEA), in force since January 1994, ii)- the Lomé (I-IV) Conventions between the EC and ACP countries. iii)- the North American Free Trade Area (NAFTA) between the US, Canada and Mexico, that is one of the biggest free trade areas in the world based on a broader initiative, '*Enterprise for the Americas*' which envisages a trade-promoting agreement extending across the whole of the American hemisphere.<sup>16</sup> and iv)- America's free-trade deal with Israel.<sup>17</sup> These are recognisable examples of joint regional arrangements that perhaps industrial countries deriving benefits from them.<sup>18</sup> There are many regional groupings among developing countries themselves as follows;

v)- recently the Asia-Pacific Economic Co-operation (APEC)<sup>19</sup>, vi)- the Andean Pact countries: Bolivia, Colombia, Ecuador, Peru and Venezuela, viii)- the Central American Common Market (CACM) comprising Costa Rica, El-Salvador, Honduras, Nicaragua, ix)- the Latin American Integration Association (LAIA, comprising Argentina, Brazil, Chile, Mexico, Paraguay, Uruguay, and the Andean Pact members). x)- the Caribbean Common Market (CARICOM) comprising 12 countries in that area.

From the legal point of view, regional groupings under Article XXIV may have two different forms: they may vary from full integration, including the creation of a customs union, or free trade areas, but in both cases, duties and other barriers to trade between countries in the group are expected to be eliminated ultimately; but they all embrace the principle of MFN treatment as regards to third parties. These regional groupings have a particular impact on their bilateral relations with the outside world.

In a free trade area, each member state maintains its individual commercial

policy, including its tariffs, towards non-members. In both cases, duties or other regulations applied by the customs union, or individually by the members of a free-trade area, are required to be no more restrictive towards non-members than those which were applied before the establishment of the group.

It may be concluded that if the unconditional MFN principle is a basis for the equal treatment of all participants in the GATT system, Article XXIV constitutes an exception to it. Furthermore, as stipulated in paragraph 4 of Article XXIV, GATT even encourages the formation of such customs unions and free trade areas:

...the contracting parties recognise the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements.<sup>20</sup>

American policy makers such as Claire Wilcox, the Director of the Department of State Office of International Policy, have explained how the US refusal to accept new preferential arrangements while encouraging customs unions had economic reasons:

A custom[s] union creates a wider trading area, removes obstacles to competition, makes possible a more economic allocation of resources, and thus operates to increase production and planes of living.

Making a comparison between a customs union or preferential approach she stated:

A preferential system, on the other hand, retains internal barriers, obstructs economy in production, and restrains the growth of income and demand. It is set up for the purpose of conferring a privilege on producers within the system and imposing a handicap on external competitors.

In summary, according to Wilcox, it is possible to say, a customs union is favourable to the expansion of trade on a basis of multilateralism and non-discrimination; a preferential system is not.<sup>21</sup> In practice, in order to be in conformity with GATT standards a customs union must, however, meet both internal and external criteria which set them as 'legal' free areas apart from "illegal" trade preferences.<sup>22</sup>

Thus, it may be concluded that customs unions are able to have a framework for



removing the barriers and obstacles from agricultural trade. One of the main reasons for this is because of the special nature of agricultural products. Partners to a regional trade arrangement are able to exchange agricultural commodities more easily with neighbouring countries than sending them over far distances. This advantage is recognised in the EC trading context as short distance agricultural trade advantage or 'proximity'. In other words the trading partners in a regional treaty are able to exchange their agricultural commodities more easily and at a lower cost within a shorter time scale. In a nutshell it is possible to conclude that agricultural trade derives more advantages from a regional rather than international framework.

### ***(1) How may developing countries gain in regional arrangements?***

The main question for developing countries is the effectiveness of regional treaties or groupings for the promotion of their economies, especially in the agricultural sector. Regional trading in the past, to some extent, benefited the developing countries since it is easier to have trade arrangements across the borders rather than transport arrangements for long distance international transactions. This idea is also recognised by the EC under a special term called '*proximity*' that prefers trade links between EC and North African and Mediterranean countries in comparison to other trading regions.<sup>23</sup>

The other advantage of regional trade is that the traditional food diet of peoples who are living in the same area is compatible,<sup>24</sup> as it is based on the consumption of local or continental products. This implies that consumers in different climates and continents require their own traditional foods and other local products, rather than using non-traditional food diets. As it was explained in the first chapter of the thesis, from a geographical point of view, it will be easier to exchange their commodities with a shorter period of delivery from the production line to the consumption point. This is

very helpful in the case of perishable agricultural produce; transport costs are much cheaper especially for bulky food commodities and vegetables. The similarity of standards and less effective sanitary and phyto-sanitary barriers among the developing countries is another advantage of regional trade pacts.

In regional trade, there are less border crossings and application of different transit taxes and administrative problems, whereas in other international transactions, the merchandise may pass different territories or borders, facing more transshipment, and many barriers such as tariffs, health and safety certificates requirements, and particularly multi-modal transport systems. Perhaps some may argue that modern air transport systems are also useful for developing countries, since it will give them the same advantages as developed countries have, to transport their products to long destinations. Although this is true, it is very costly and not within the means of many developing countries. A combination of elements facilitates modern transnational trade. The developing countries should hence apply a mixture of all the available facilities in their means in order to have better gains both in regional and international arena.

#### ***D- 'HABERLER REPORT' AND DEVELOPING COUNTRIES***

The first signs of consideration of developing countries interests came as a result of the decision of the twelfth session of the GATT Contracting Parties (1957). It was agreed to establish a panel of experts to examine trends in international trade, with effective consideration of agricultural protectionism, fluctuations and failure of export earnings to keep pace with import demand in developing countries. These were identified as worrying features of the international trading environment. It is hence important to examine how the relevant objectives of GATT emerged and what the status of the real problems of developing countries in the system were.

The Haberler Report introduced a radical change in the status of the less developing countries in the GATT. It supported the view then current among the primary producing countries that existing rules and policies were relatively unfavourable to their economic interests. As a result the potential benefits of their participation in the GATT were limited.<sup>25</sup>

The Report also criticised the policies of both industrial and developing countries, particularly industrialised countries. It was observed that, owing to differences of demand between industrial goods and primary products, the developing countries who liberalised imports of industrial goods would experience a greater flow of imports on manufactured goods, in comparison to the case that industrial countries open their borders to low quality primary products from developing countries. The reason is mainly because of high demand and the novelty of many industrial goods in developing countries markets. In contrast, if developing countries export any processed or manufactured goods, they are not generally able to compete with high quality imports from industrial countries. On the other hand agricultural commodities in industrial countries that are subject to internal and external protection have already satisfied the industrial countries internal demands and eventually reduce the need for imports from developing countries.

The Report findings led to a number of procedural decisions by the Contracting Parties aimed at making the GATT rules more effective for dealing with agricultural products. One of the other crucial decisions was to begin regular '*consultations*' with principal importing countries concerning the application of protective measures in favour of their domestic agricultural products. The report pointed to the result of the GATTs' secretariat data collection of 1965, in relation to the use of the same restrictive measures. The report indicated that more than twenty industrial contracting parties

admitted the use of quantitative restrictions. Among them, 10 countries operated state trading monopolies; four imposed variable levies on some imports;<sup>26</sup> at least four, including the US, supported prices of some products at predetermined levels; and one, the UK, made wide use of deficiency payments.<sup>27</sup>

### **(1) *Committee II and agricultural trade issues***

As stated in chapter three of the thesis, Committee II was one of the three committees established as a result of the '*Haberler Report*' to deal mainly with agricultural trade issues. Its main mandate was;

- a)- to assemble, in consultation with other organizations such as FAO, data regarding the use of non-tariff measures for the protection of the developing countries national agricultural products or in support of incomes of agricultural producers, and the agricultural policies from which these measures derive, b)- to examine the effects of the above measures on international trade in agricultural products,
- c)- to suggest procedures for further consultations between all Contracting Parties on agricultural trade policies that eventually affect international trade.

As the result of fundamental differences of opinion between the Committee members over the nature of GATT some disputes arose,<sup>28</sup> but the Committee concluded that there should be a moderation of industrial countries attitudes for reducing the protective measures agricultural trade.<sup>29</sup> At the same time the Committee criticised the change of attitude from price support to income support that had almost the same effects. A fundamental change in the nature of price support schemes in national agricultural products also was recommended. It was further recognised that the *price-setting* exercise, common at the time, should take account of the need to increase consumption and to ensure that it should not encourage more production in industrial countries.

The Committee further realised that there was a disruption in the balance of

rights and obligations each contracting party expected from GATT, by indicating that:

These developments are of such a character that either they have weakened or threatened to weaken the operation of the General Agreement as an instrument for the promotion of mutually advantageous trade. This situation raises the question as to the extent to which the GATT is an effective instrument for the promotion of such trade.<sup>30</sup>

On the base of Committee II suggestions in 1967, a work programme agreed to establish another Agricultural Committee whose principal mandate was to examine the problems of agricultural trade and to consider effective solutions for them.<sup>31</sup> But the findings of that Committee did not lead to a fundamental shift of the industrial countries position towards consideration of agricultural trade problems of developing countries.<sup>32</sup>

## **(2) COMMITTEE III AND DEVELOPMENT ISSUES**

The principle mandate given to Committee III was:

to consider and report to the Contracting Parties on other measures for the expansion of trade, with particular reference to the importance of the maintenance and expansion of export earnings of the less developed countries [for] the development and diversification of their economies.<sup>33</sup>

Committee III succeeded in identifying the real problems of developing countries, by establishing a working programme with an agenda that included the trade interests of developing countries and the barriers facing their trade performance. The Committee also examined the obstacles to the expansion of trade in primary and agricultural products.<sup>34</sup>

During 1960-61 the Committee further concentrated on the problems facing developing countries who were exporters of certain products. It dealt with the question of a speedy removal of export quantitative restrictions<sup>35</sup> affecting developing countries exports and the elimination of any element of discrimination against their exports as the result of import restrictions. The Committee emphasised tariff reduction and the need to recognise the non-applicability of the reciprocity principle to developing countries.

In 1961 the Contracting Parties adopted a Declaration on the promotion of trade of less-developed countries.<sup>36</sup> The Declaration urged contracting parties to avoid the use of production and export subsidies on primary products involving prejudice to the export interests of developing countries. Moreover, Committee III established special working groups to deal with trade in tropical products and a '*Action Programme*',<sup>37</sup> that paved the way for a fuller participation of developing countries in the GATT system.<sup>38</sup>

### **(3) *The main results of the Haberler Report, Committee II and III.***

The Haberler report considered excluding the agricultural sector from the GATT's agenda, since many industrial countries were not able to cut their protectionist measures in this sector. It also recommended the allocation of funds for buffer stock action in developing countries.

It is possible to conclude that the publication of the Harberler Report on trends in international trade was one of the first attempts to realise the developing countries' crucial situation, and to criticise the industrial countries policies in the early years of the GATT operation. It also realised the major gap between the industrial and developing countries in terms of unequal bargaining position and economic and political skills. These Committees represent an historical watermark with a declaration of intent by industrial countries in favour of developing countries.<sup>39</sup> They may be considered as turning points in GATT relations with developing countries. It was the GATT's turn to consider and respond to the Reports' findings.

Although the suggestions of Committee III were neglected from the outset, they could be perceived as a first courageous step in identifying the nature of agricultural trade problems of developing countries during the early days of the GATT operation. Later the Committee recalled that in the three years of its existence, it had made an extensive study of various types of barriers to the trade of less-developed countries. On

the findings of Committee III, a general policy Declaration was provided as a basis for positive action in two stages:

a)- that immediate steps should be taken to establish specific programmes for action and, where feasible, target terminal dates, for progressive reduction and elimination of barriers to the exports of less-developed countries; in this connection it was necessary to pay attention to the question of duty-free entry for tropical products, and, b)- the contracting parties were obliged to improve market opportunities for the exports of less-developed countries.<sup>40</sup>

The GATT response was the establishment of three committees in the November 1958 session to lay down the foundation for a Co-ordinated Programme of Action directed towards the expansion of international trade in agricultural products and consideration of developing countries interests. Later the recommendation of Committee II lead to the creation of a Programme of Action for consideration of developing countries agricultural trade interests in the GATT system.<sup>41</sup>

#### ***E- THE PEARSON REPORT AND MOVES TOWARDS THE UNDERSTANDING OF AGRICULTURAL TRADE PROBLEMS.***

The '*Pearson Report*' of the Commission on International Development, published in 1969, emphasised the significance of negotiations in the GATT system among developing countries, and recommended the conclusion of wide-ranging agreements extending to all developing countries. Subsequently in 1970, there was an increase in negotiations among developing countries themselves, with the effective participation of sixteen developing countries in the system.<sup>42</sup>

These trends at the beginning of the Tokyo Round can be treated as a clear indication that these countries were no longer mere observers or endorsers of the industrial

countries' decisions in the negotiations. In the meantime, these developing countries realised that agreements among themselves in the framework of the GATT would facilitate the circulation of agricultural commodities on a more regional level. It was the result of such effective participation that 300 consultations took place within the framework of GATT, leading to the conclusion of more than fifty bilateral agreements among developing countries. Subsequently these agreements were made multilateral among the sixteen participating countries.

The industrial countries were exempted from these agreements known as *Protocols Relating to Trade Negotiations Among Developing Countries*. Despite the disagreement of the American administration who considered these concessions as a waiver of the GATT rules, the exchanges of concessions among developing countries was one of their successful attempts to develop bilateral trade or so called South-South trade relations.

The objection of the American negotiators had no legal grounds, because the conclusion of such bilateral agreements amongst the developing countries was based on the exemptions from obligations under the MFN principle. Article XXIV of the GATT recognises the creation of custom unions, regional arrangements and free trade areas among the contracting parties. Moreover Article XXV(5) of the GATT allows the developing countries to exchange preferences with each other in any products of interest, without granting similar preferences to the industrial countries.

In addition to this progress, during the preparations for launching the Tokyo Round in 1972, the GATT secretariat realised that technical assistance is an essential need for almost all developing countries to help them participate more actively in the negotiations. The Technical Assistance Unit was established in 1974 within the secretariat to help third world countries. This was a major step towards the full participation of developing countries.

The specific indication in the Pearson Report for encouraging developing



countries to negotiate bilateral agreements among themselves is of particular importance and is in conformity with the GATT rules and articles relating to developing countries. Bilateral agreements could also lead to more regional arrangements among developing countries.

***F-THE 'LEUTWILER' AND 'CABLE' REPORTS AND DEVELOPING COUNTRIES.***

The '*Leutwiler report*' was completed by seven eminent persons following the invitation of the GATT Director General in 1983 to report as an independent group on the problems facing the international trading system. It was called '*Trade Policies for a Better Future*'. Although it was not particularly directed towards developing countries, its findings are of value in recognising the nature of agricultural trade problems. Among other things the Leutwiler Report recommended that Voluntary Export Restraints and Orderly Marketing Arrangements, practised at the time by industrial countries should be brought into the conformity with GATT rules; in addition to the textiles and clothing arrangements. The Report further states that the special treatment that developing countries have received so far under the GATT system is of limited value.<sup>43</sup> One of the major findings of the Report was that in the course of ten years between 1963-73 there was a sharp decline in the labour force and substantial shift from agriculture to industry and service sectors especially in the industrial world. Three regions were taken into account, North America, Japan and Western Europe, with three sectors under consideration.

TABLE NO. 7

The shift of jobs in industrial countries from agriculture to other sectors between 1963-73 (millions of jobs)			
Sector	North America	Japan	Western Europe
Agriculture	-1.5	- 4.9	- 8.8
Industry	+ 4.9	+ 5.0	+ 1.7
Services	+ 15.7	+ 6.5	+ 11.5

Source , OECD, cited in GATT, Trade Policies for Better Future, Proposal for action <sup>44</sup>

Table 7 clearly shows that three major industrial blocks have lost 14.5 million jobs in the farm sector, but in return they gained more than 45 million alternative new jobs in other sectors. In developing countries where there were no alternative jobs, they could not cope with such enormous job losses in the agricultural sector. This led to mass emigration in the last three decades and the building up of thousands of new cities in the third world with over a million inhabitants creating a demand for food coming from industrial countries.<sup>45</sup>

Later in 1978 the '*Cable Report*', launched under GATT auspices, noted disillusionment of developing countries with the negotiations in the Geneva Round. Among the many recommendations, the Report notes the importance of foreign investment regulations in LDC's which hamper growth of manufactured exports. It also argues that middle income and industrialized LDC's should look at reducing protection of their own markets in return for improved access to industrial markets for their agricultural commodities and find ways of diversifying to manufactured exports.

### ***G- THE EFFECTS OF THE INCLUSION OF PART IV OF THE GATT ON DEVELOPING COUNTRIES.***

Part IV clearly sets a number of criteria to assist least developed and developing countries. For example Article XXXVI(2) calls for a "*rapid and sustained expansion of the export earnings of the less -developed contracting parties*". Article XXXVI(6) is the base for monetary co-operation in the area of trade and development in the GATT. It emphasises the importance of international lending agencies for contributing to the economic development of these countries. Article XXXVI(8) states that industrial countries do not expect reciprocity<sup>46</sup> for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.

Article XXXVII lists a number of commitments by industrial countries to assist third world countries. For example Article XXXVII(1)(a) requests industrial countries to accord high priority to the reduction and elimination of barriers to those products that are currently or potentially of particular export interest to less-developed contracting parties. Article XXXVIII calls for joint action of all contracting parties to proceed with development objectives as well as appropriate collaboration in the matter of trade and development policy with the UN and its agencies including UNCTAD.<sup>47</sup>

### ***H-THE ADAPTATION OF ENABLING CLAUSE (WAIVER CLAUSE) FOR DEVELOPING COUNTRIES.***

As Dam notes, the legal recognition of development needs as such is of great symbolic significance in the GATT system whereas in terms of concrete rights and obligations little or nothing has been gained by them.<sup>48</sup>

In other words the recognition of development needs in itself is an important principle, but in practice the developing countries have not been able to make any substantial

gains. The decision on '*Differential and more favourable treatment, reciprocity and fuller participation of developing countries*' commonly known as the Enabling Clause, was adopted at the end of the Tokyo Round in 1979. It was considered to be a clever compromise. Paragraph 1 of the Enabling Clause reads:

Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties

Paragraph 2 limits the application of this exception to four different occasions:

- 1)- tariff preferences in accordance with GSP;
- 2)-non-tariff measures within the framework of "instruments multilaterally negotiated under the auspices of the GATT."
- 3)- tariff and, under certain conditions, non-tariff preferences granted to one another by developing countries (an alternative to Article XXIV GATT) and; 4)- special treatment of the least developed among the developing countries.

It should be realised that under paragraph 1 and 4 developing countries not GATT members also benefit from differential treatment. In paragraph 3, three conditions are laid down for treatment under the Enabling Clause; differential treatment:

- (a) shall be designed to facilitate and promote trade of developing countries and not raise barriers or to create undue difficulties for the trade of any other contracting parties;
- (b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis; (c) shall ... be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

The first two conditions safeguard traditional GATT principles particularly in the interest of industrial countries; (b) is particularly problematic, because it must be accepted as a consequence that the value of preferences is reduced by general tariff reductions. The last condition was included to assist developing countries and give them a better chance to cope with their trade difficulties.

### **(1) Outcome of negotiations regarding the Enabling Clause**

The Enabling Clause allows GATT Contracting Parties to provide differential

treatment in favour of developing countries in respect of the above conditions. It requires that any action is intended to facilitate and promote trade and to respond positively to developing countries' development, financial and trade needs. Arrangements providing for differential treatment must not prevent the further reduction of trade barriers on a MFN basis, nor create obstacles to the trade of countries not parties to the arrangements.<sup>49</sup>

Although the Enabling Clause gives a permanent legal authorization for preferences, it does not really offer any legal certainty for the receivers as developing countries, since many of them like GSP, are temporary. One of the best examples of this practice is when the EC or the US unilaterally decide on certain criteria such as: the category of developing countries included in their preferential schemes, on the products involved and on the application of tariff quotas.

### ***I- GSP AND ITS EFFECT ON AGRICULTURAL TRADE***

The main reason for considering this section is to evaluate the economic advantages sought by the developing countries and the trade barriers resulting from various limitations contained in the regulations governing preferential treatment. It is possible to investigate whether the system has brought any meaningful trade benefits to the developing countries.

The subject will be dealt with in different dimensions. The first one is the origins and the political problems surrounding trade preferences. One of the main focuses here is the achievements of developing countries in the GSP. The industrial countries' gains from them will be dealt in the next section .

The GSP was formally introduced at UNCTAD, in its first session in Geneva in 1964. The main goal of the Conference was to establish a new international trade policy that would contribute to raising the material wealth of the developing countries through

trade rather than aid. The GSP is one of the original initiatives in the field of international trade policy aimed at stimulating economic development by introducing preferential treatment in favour of the developing countries.

It is important to note that the rapidly evolving nature of the international trading system has affected the prospective advantages embodied in the preferential system. One of the new developments has been the establishment of the EC as an important trading block and the revisions in trading arrangements with numerous developing countries.

In 1986 a negotiating committee was set up in Brasilia to investigate the implementation of a Global System of Trade Preferences among developing countries. Consequently the Ministerial Declaration agreed to launch the first round of GSTP negotiations before September 1987. The negotiations followed in 1988 with participation of 62 developing countries at ministerial level in Belgrade to adopt a practical agreement on the GSTP. At present it is a trading arrangement under which members of the G-77 will exchange trade concessions among themselves.<sup>50</sup> This is one of the successful attempts by developing countries in their global trade relations that its scope of coverage goes even beyond the boundaries of the GATT system, and allows other developing countries to participate in the scheme.

***(1) How does the system help developing countries' agricultural trade performance ?***

Some experts<sup>51</sup> believe that, in principle, the GSP is intended for the industrial export of developing countries, not for agricultural exports.<sup>52</sup> Thus developing countries could possess actual or comparative potential advantages, but they should take into account all dimensions of the issue. The margin of preferences could be large, in keeping with the level of MFN protection if it also is high. In practice it is in this area

where preferences could be effective, but in many instances they are limited by voluntary export restrictions,<sup>53</sup> tariff quotas and ceilings.<sup>54</sup> For example in textiles, Morocco, Tunisia and Turkey have been able to expand their share of EC imports of textiles dramatically in the last decade, while less preferred countries in Asia, falling under the MFA have seen a decline in their market share in industrialized countries.<sup>55</sup>

The same picture emerges in agricultural products: imports falling under the CAP do not receive preferential treatment or enjoy only limited preferences<sup>56</sup>.

It is possible to conclude that the measures dealing with the developing countries' interests and their development needs basically rotate around two cardinal principles in the GATT system: the principle of reciprocity in relation to developing countries, replaced by the principle of non-reciprocity. In other words the operation of the MFN principle is suspended in favour of the principle of '*Differential and Favourable Treatment*' for the developing countries.

The critics of GSP refer to the arbitrary nature of the system. There may be good reasons for such a claim; for example in the US, the Congress has been especially fond of granting the President unreviewable powers to withdraw GSP or to retaliate against foreign governments not living up to their obligations toward the US. Thus, for example, the law implementing the GSP allows the President complete discretion to withdraw preferences, including discriminatory withdrawals against a particular developing country.<sup>57</sup> The other weakness of GSP is the temporary nature of it, since the industrial countries may grant GSP for a certain period of time, but an early withdrawal of such preferences could damage the development plans of developing countries that have balanced their trade policies with the GSP.

### ***J- WHAT SHOULD BE DONE TO SECURE DEVELOPING COUNTRIES INTERESTS ?***

In the light of the foregoing it is possible to argue that the interests of developing countries can be taken into account in a number of ways. In sectoral terms, the industrialised countries could undertake significant trade liberalisation in the areas of greatest interest to developing countries such as: agriculture, textiles and tropical products. Agreement could be facilitated by provisions for their progressive adjustment to trade liberalisation, such as technical assistance to domestic industry and national administrations in applying appropriate liberalisation strategies.

Among the developing countries, the newly industrialized countries (NICs) supposed they had more to gain from a stronger GATT system, because it would help them to protect access to industrial countries markets on which their growing prosperity has been largely based. NICs could contribute substantially toward agricultural trade reforms, both by participating in the negotiations and by liberalization of barriers to their markets (including textiles and agriculture). In particular, the NICs could have undertaken two specific reforms to help dispel any charge that they are '*free riders*'.

The first would link reforms on safeguards by industrial countries (including gray-area measures)<sup>58</sup> with reform of balance of payments safeguard rules used by developing countries (the Article XVII-XIX issue). The second would be textile liberalization by the developing countries, which would complement the broader reform of the existing quota system by the industrial countries, and participation by some NIC's such as Korea, in the agricultural trade reforms.

The developing countries also tried to practice their rights regarding the waiver under GATT Article XXV(5). In this respect, India, Egypt and Yugoslavia concluded



an agreement involving preferential tariff concessions between themselves, although it was approved under the GATT system,<sup>59</sup> but owing to political reasons that agreement made no express reference to Article XXV(5) of the GATT. Subsequently, under the same waiver, 16 developing countries concluded a protocol in 1971 extending tariff concessions to one another on certain listed items. The industrial and developing countries outside the protocol were not able to benefit from these concessions. Later the number of participants rose to 18 countries.<sup>60</sup>

***K-THE CAIRNS GROUP: AN AVENUE FOR CO-OPERATION OF AGRICULTURAL EXPORTERS.***

The Cairns Group is a coalition of 14 agricultural producing industrial and developing countries. The objective of this coalition is to achieve fully liberalised trade<sup>61</sup> in agriculture by eliminating distortive agricultural policies and by binding the necessary undertakings under strengthened GATT rules and disciplines. The Cairns approach for creating a single grouping between industrial and developing countries who share the same interests in agricultural exports is of particular importance. It was originally developed to press for the inclusion of agriculture on the UR agenda.

The Group argued for reform in the Uruguay Round on three important areas, domestic support, market access and export competition.<sup>62</sup> What is important is their emphasis on the collective approach of the two groups of nations with different economic, political and social backgrounds. Having similar goals in agricultural trade encourage them to set aside their differences and to co-operate on common interests. Countries who are exporters of agricultural commodities are able to join this group or try to arrange similar regional agricultural trade arrangements with interested parties.

## **L- HOW MAY DEVELOPING COUNTRIES POLICIES CLASH WITH INDUSTRIAL COUNTRIES ?**

The industrial countries, monitoring developing countries' agricultural policies, have on a number of occasions objected to developing countries taking protectionist measures in favour of their farming populations. One of the most recent cases has been the Philippines new '*Act providing a Magna Carta for Small Farmers*' implemented in February 1993. The US complained that the legislation specifically prohibited imports of agricultural products that are produced locally '*in sufficient quantity*', including poultry and poultry products, pork and pork products and corn and other feed grains. The US believed that '*those restrictions were having a negative impact on USA producers, and expressed concern that they might be extended to imports of processed potato, as well.*'<sup>63</sup>

The US argued that applying such measures is contrary to the Philippines commitments to trade liberalization. In response, the Philippines explained that the '*Magna Carta*' was a comprehensive piece of legislation designed to relieve the condition of its small farmers. It also indicated that part of the legislation concerning trade measures was not a step backward but represented only '*a pause*' in its structural reform programme. The Philippine officials argued that recent trade developments had led their government to conclude that it could not continue to pursue trade liberalization at the expense of the interests of its farmers. It is interesting that the EC made the same complaint echoing the US concern and described the measures as inconsistent with the GATT and Uruguay Round's '*standstill*' commitment against new trade restrictions.<sup>64</sup>

This case was a prime example of the difficulties of developing countries in the GATT. Perhaps the Philippines legislation was the last resort to help its farmers, but under the standstill commitment any new measure was unacceptable and the Philippines

were not only prohibited from applying any protection to their farming population but were also obliged to open their market to products from industrial countries. It shows how market intelligence helps the US to determine that the Philippines practice "*might be extended to imports of processed potato as well*",<sup>65</sup> which serve against US access to Philippine markets. In such a situation it is worth noting the vulnerability of developing countries.

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**II. THE PERSPECTIVE OF INDUSTRIAL COUNTRIES IN THE GATT  
TOWARDS AGRICULTURAL TRADE PERFORMANCE OF DEVELOPING  
COUNTRIES.**

The first section covered the perspective of developing countries in the GATT. This section elaborates the perspective of industrial groups in the system and involves a critical analysis of the policies of three leading industrial countries, namely the EC, US and Japan<sup>66</sup> as practical examples of policies towards developing countries and their influence in shaping the rules and mutual relations with developing countries. Although there are many similarities within these countries' policies and attitudes towards the third world, they have, nonetheless, different preoccupations.

In the examination of agricultural trade policies of these major industrial states or groups, particular attention is given to those policies affecting developing countries. For example it looks at the protectionist measures and their related elements such as tariffs and non-tariff measures, health and sanitary regulations, affect agricultural trade performance of developing countries.

The impact of interventionist decision-making policies of industrial countries on the third world is also queried, as is the non-applicability of agricultural trade policies of industrial countries in developing countries, bearing in mind the degree of divergence in the policies of the industrial groups themselves. Systemic difficulties arise from the protectionist nature of industrial countries' policies and measures.

Some have criticized the industrial countries' policies as routinely trying to find escape routes for discharging their commitments towards other participants, mainly developing countries. An example is the raising of non-tariff barriers against cheap imports from developing countries. Another criticism is that industrial nations are not serious in choosing GATT as a suitable instrument for liberalising agricultural trade. GATT's ability to open up agricultural trade was undermined from the start when certain explicit allowances for more liberal agricultural trade practices were written into its rules, including the use of quantitative import restrictions and exports subsidies.

***A- THE EFFECTS OF INDUSTRIAL COUNTRIES' AGRICULTURAL TRADE POLICIES ON DEVELOPING COUNTRIES.***

Developing countries need to assist their farming populations but, unlike in industrialised countries, such assistance does not normally generate structural surpluses. Accordingly, developing countries' assistance to the agricultural sector can and should be exempted from production limits commitments in so far as it does not lead to disruptions of the market.

In order to analyze different dimensions of the industrial countries' policies, the following aspects are dealt with below:

a)- the share of agriculture in industrial countries' economy and the relationship between agriculture and development; b)- the need for change of attitudes in industrial and developing countries; and c)- the potential importance of developing countries markets.

***(1) The importance of agriculture in industrial countries' economy.***

In comparison with developing countries whose agricultural trade occupies a significant share of foreign export earnings, in developed market economies only New Zealand has an agricultural share of exports in the same range as that of developing countries.

In Europe the pattern of agriculture has changed more rapidly than almost any other economic sector. In 1986 some 15.2 million people were employed in agricultural activities in the Community of ten member states. This number has dropped to 5.2 million, i.e. by almost two-thirds; even by enlargement, the twelve EC members have had an agricultural work-force of just over 10 million.<sup>67</sup>

In comparison, in OECD countries agriculture represents only 8% of total merchandise trade, contrasting with around 60% for New Zealand and 35% for Australia to more than 20 per cent for a number of European countries.<sup>68</sup> These figures indicate that parallel to emphasis on and protection of the agricultural sector in industrial countries, the economies of developing countries are more dependent on agricultural trade.

Different levels of dependence on the agricultural sector correspond to application of different policy towards developing countries. Many of the developing countries, India in particular, have stressed the close connection between agriculture and the development process in their countries. In practice the industrial countries pay more attention to their agricultural sector than do developing countries.

***(2) The need for change of attitudes in industrial countries towards developing countries.***

Owing to the particular dependence of developing countries on agricultural trade, the GATT negotiations could be expected to pay specific attention to this by special

reference to the dimension of agricultural development in their societies.

In recent years, the application of new techniques such as research innovations, the control of livestock disease, improved varieties of traditional crops, and development of non-traditional crops that are drought resistant or insensitive to water salinity, have led to the acceleration of farm production in many industrial countries. They are reflected in the mass production of certain products such as grain and dairy products in industrial countries. In comparison many developing countries faced a sharp decline in their agricultural output. They expect the GATT system to realise the need for a substantial change of industrial countries' attitudes toward developing countries, by giving freer access to their markets with less non-tariff barriers.

The other area of concern relevant to developing countries is the reduction in the total output of some products that were subject to their traditional export to industrial countries. For example the export of meat by Argentina to the EC market was stopped after the EC achieved self sufficiency in that area. In response, the industrial countries also require developing countries to adjust their domestic and foreign trade policies in line with industrial markets. Examples for such changes of policies in recent years include India's freer pricing and regional trade system and Argentina's reduction of grain export taxes.<sup>69</sup>

### ***(3) Developing countries markets a potential target for industrial countries***

The developing countries are still the best markets for the sale of industrial countries surplus commodities, and have resulted in substantial profits. Uncertainty and dramatic change of policies in the third world also contribute to substantial gains by industrial countries. For example, Mellor and Johnston (1984)<sup>70</sup> cite the case of Taiwan, where feed use of cereals rose from 1% to 60% of total use between 1961 and 1981. The key factor in grain import demand for some rapidly growing economies is the shift

of attitude from food to feed use of commodities in order to fulfil the high demands for meat.

One of the most plausible reasons for more cereal imports, in addition to rising output per capita, is the decline of total national cereal production as a result of environmental changes, and non-profitable production of cereals by developing countries,<sup>71</sup> and the increasing level of income from other sectors in these countries. For example, the report by Winrock International projected cereal imports of 152 million metric tons by Africa, Asia and Latin America in 1993.<sup>72</sup>

The increase of grain imports in the majority of developing countries could be the result of a general decline of national cereal production which can be caused by different elements such as climactic changes (global warming), lack of proper management and investment in the agricultural sector, and the urbanisation of developing countries.

### ***B- US POLICIES TOWARDS THE DEVELOPING COUNTRIES***

Since the establishment of the GATT the US has tried to impose its own terms and conditions on the system. Despite resistance from the EC and a substantial number of developing countries the US succeeded in accommodating its terms to the system to some extent.

The US Agricultural Adjustment Act of 1955 has played a significant part in avoiding the GATT obligations, waived under GATT Article II (schedules of concessions) and Article XI (general elimination of quantitative restrictions). The US argue that these Articles are in conflict with actions required under Section 22 of the Act. The Section requires the US administration to impose quantitative restrictions and special duties on imports that are likely to damage US farm support programmes.<sup>73</sup>

For many year the US has been the world dominant power in agricultural

exports. The earnings from grains and other agricultural commodities exports to the developing world has been an important potential target for US grains export. Between 1970 and 1980 the value of US agricultural exports more than doubled in real terms, with the real value of exports more than tripling. Owing to some interrelated events this sharp rise dropped dramatically during the 1980s. Any agricultural trade liberalisation in the GATT negotiations offers the potential for a sharp increase in US export of grains, oilseeds, and beef to developing countries.<sup>74</sup>

#### **a- US East Asia policies**

Regarding the dominant power of the US administration in the developing countries, such as East Asia, Ingersoll<sup>75</sup> has indicated that:

US policy makers should recognize that fears of foreign economic domination on the part of the less developed nations of East Asia are legitimate, but at the same time they should strive to convince these nations to open their economies to the technology...that flows from foreign investment.

One may ask what is the acceptable price for such transfers of technology and foreign investment to these countries. The US administration acts in the belief of having a vital interest in building stronger ties with the third pillar of the world economy, the Asia and Pacific region. The US gains more from the exports to this area rather than encouraging the countries to rely on their own domestic market. In this respect Ingersoll suggests that free trade under GATT is the best instrument for all countries of East Asia and emphasises that such an approach safeguards the economic independence of these nations. He also urges the US to offer them a choice between GATT and tough bilateral agreements that restrict their exports to the US, if necessary, through so-called voluntary restraint agreements.

The US has preferred to manage its relations with East Asia on a bilateral basis and there has recently been a flurry of new proposals and initiatives. But some regional initiatives remain relatively weak.<sup>76</sup>



**b-The US and Central American developing countries**

US economic relations with Latin American states are of particular importance, since their exports to the US grew faster than other region during the 1980s. The US is currently the most important market for the region, absorbing almost 40% of their exports. The US also supplies about one-third of Latin American imports. There are distinctive characteristics for each country, for example, more than two-thirds of Mexico's total trade is with the US, while the proportion is about one-fifth for Chile, Paraguay and Uruguay.

Central American countries established four regional arrangements, Andean Pact, Central American Common Market (CACM), the Caribbean Common Market (CARICOM) and the Latin American Integration Association (LAIA). These regional groupings have a particular impact on their bilateral relations with the USA. In economic terms, agricultural product imports from Latin American countries to the US are 14 percent in comparison with fuel (25%) and manufactured goods (55%), but the importance of Latin America as a trading partner for the US has declined over the past decade, largely as a result of the overall economic slow down in the region and inability to finance imports.<sup>77</sup>

In addition most imports originating from developing countries, including all of those from Latin America, are eligible for preferential treatment under the US GSP scheme. A number of other preferential schemes have also been introduced by the US for individual developing countries or groups of countries in the region. These include the Caribbean Basin Initiative and the Andean Initiative.<sup>78</sup> The scope of these preferential agreements remains limited by many restrictions.

**c) -Relations with other nations**

The US-Mexico Free-Trade Agreement was established as a comprehensive free-trade agreement on the basis of the greatest possible mutual benefit entailing the gradual elimination of all trade barriers, adequate protection for improving and expanding the flow of goods, services and investment between the two countries.<sup>79</sup>

These policies including the US and Canada Free Trade Agreement (not a subject of this section) are part of the overall US bilateral and regional approaches towards the outside world. Many of them fall under the Article XXIV umbrella, but in practice they are under US domination and far from GATT objectives.

The EC, Japan and especially the US have strong interests that are, according to their terms, more compatible with a liberal multilateral framework.<sup>80</sup>

The US is responsible for the first highly visible breach of the agricultural trade provisions of the GATT as early as 1951, in the Dairy Quotas case.<sup>81</sup> Such violations of GATT rules have opened the door for other strong parties to violate the rules involving long term uncertainties for all the contracting parties.

Since the consequences of US bilateral actions are enormous, and the slow procedures of the GATT could not tackle them easily, such policies have been the main source of disunity in the GATT. For example, according to a report (from October 1985 to September 1987) that was considered by the GATT Council in 1990, most of the contracting parties had wanted the working party to recommend that the US should undertake a review of the waiver in order to set a realistic timetable for its termination, but the US disagreed and declared that Section 22 was needed because of the lack of operationally effective GATT rules and disciplines in international farm trade.

The EC has also contended that the US waiver had created an imbalance of rights and obligations in the GATT while several other delegations expressed concern about

the lack of progress in removing the 35 year old waiver. This means that the GATT system lacks a practical mechanism for forcing its rules on the contracting parties, especially industrial powers such as the US.

In addition to waivers, the application of protectionist measures have affected imports of agricultural products into the US, particularly in livestock and meat, (e.g. through measures for foot and mouth disease control) fruits and vegetables.<sup>82</sup> The US has provided preferences to eligible Caribbean countries e.g. on sugar, under the Caribbean Basin Economic Recovery Act.

It must be realised that many of the potential customers of the US are less developed countries whose purchasing power is constrained by insufficient foreign-exchange earnings and spreading debt-service obligations. Many of them do not have sufficient negotiating power to argue with the US in the terms of bilateral and multi-lateral trade.

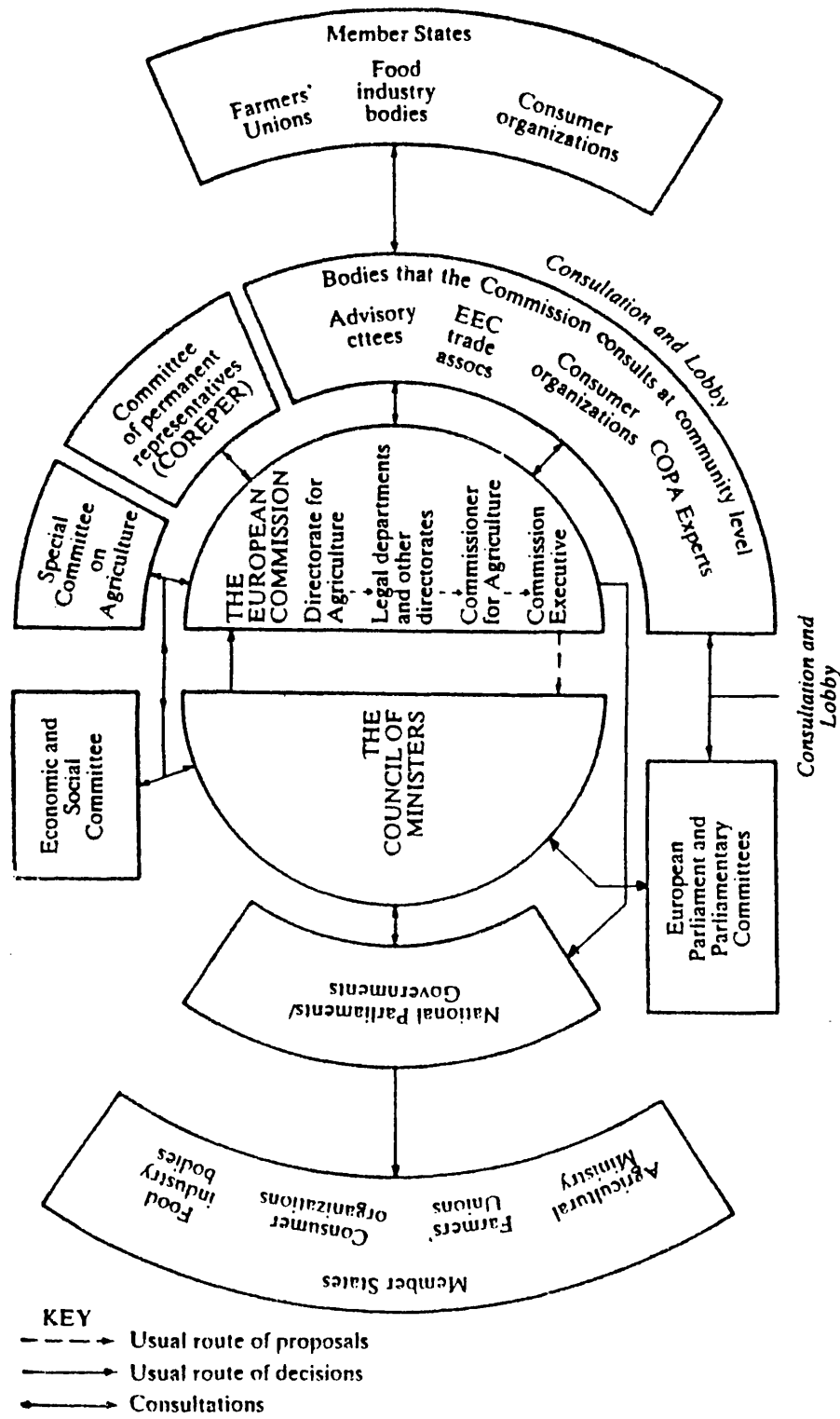
### ***C- THE ROLE OF THE EC COMMON AGRICULTURAL POLICY TOWARDS DEVELOPING COUNTRIES***

In examining the industrial countries perspectives in the GATT, one of the most important models dealing with trade in agricultural products is the EC Common Agricultural Policy that acts as a general policy-making machinery for harmonisation of individual national agricultural policies. On the other hand the overall impact of the EC and its Common Agricultural Policy on global agricultural trade, and has its own significance. Table Eight represents a clear picture of the legal decision making process of the EC under CAP, although there are some changes to this procedures as the result of the recent EC legislations.

TABLE NO. 8

Making and applying CAP Law, The Decision -Making Process

The Decision -Making Process



Source: Marsh J. S. and Swanney, Agriculture and the European Community London, (1980), p.23.

Since the mechanisms establishing the CAP have been extensively described elsewhere it is not the purpose of this thesis to repeat those works.<sup>83</sup> However, there are two important aspects of CAP which should be explained. First, use of import levies and export subsidies serve to isolate domestic producers from the effects of external competition by nullifying price competition. The second is the application of GSP to some 300 agricultural products but, due to the selective and arbitrary nature in the application of the scheme, in practice preferences are often limited to price or quantitative restriction for a limited number of countries and products.

Of these issues, the use of export subsidies has created the greatest friction in the last ten years. It led to an increase in total production level in EC countries. Unresolved conflicts about the Community's increased share of the world market in sugar, wheat flour and dairy products for example, and its practice of subsidising the primary product component of processed products like pasta, have contributed to the view that GATT disciplines on subsidies under Article XVI and the Subsidies Code have been ineffective. Under the Subsidies Code, industrial countries are prohibited from using export subsidies on non-primary products. However some of these countries do subsidize the primary product component of processed products.

There are differing views as to whether this is allowed under GATT rules or not. It has been proposed that this practice should be eliminated or governed by whatever new rules are established on export subsidies on primary products. This is why the US and the Cairns Group sought significant specific reduction commitments on export subsidies from the Community.

TABLE NO. 9

Percentage Region/ Group Primary Fuels Manufactures Total of 1988,<sup>84</sup> commodities to EC

All Developing countries of which	1923	3306	4920	10149	6.9
ACP	491	443	85	1019	5.2
Mediterranean <sup>85</sup>	225	694	754	1673	6.4
South-East Asia <sup>86</sup>	266	-	2587	2853	6.8
Latin America <sup>87</sup>	894	261	404	1559	5.4
West Asia <sup>88</sup>	24	1346	177	1547	9.1

Source :UNCTAD secretariat estimates, based on official international data.

Considering the above figures, the biggest gainers in commodity trade in the world are expected to be the oil exporters of West Asia and North Africa and the economies of South-East Asia whose exports are predominantly manufactured goods and who are among the Community’s major developing country suppliers of high-technology manufactures. The estimated net trade creation for ACP and Latin American countries is likely to be much more modest. The effects of the SEM on developing country exports are likely to be positive, but relatively small, assuming that EC trade policy towards non-members remains unchanged.<sup>89</sup>

(1) EC Mediterranean policy

Owing to its the geographical location, historical colonial ties and importance of agricultural products in Mediterranean countries, the EC established preferential trade and co-operation agreements with Algeria, Morocco and Tunisia,<sup>90</sup> and with Egypt, Jordan, Lebanon and Syria,<sup>91</sup> with Israel and, later with Yugoslavia.<sup>92</sup> Association Agreements are intended to establish Free Trade Area (FTA) with associated states.

## **(2) EC Lome' Conventions policy**

The conclusion of four Lome' Conventions between the EC ACP can be regarded as a practical and enduring system of a relationship between North and South countries. The preamble to the first Lome' Convention clearly refers to the establishment of such a pattern by indicating that:

a new model for relations between developed and developing states compatible with the aspirations of the international community towards a more just and balanced economic order.

In other words its prime objectives are :

- a)- a partnership in which the political, social, cultural and economic options of each partner are respected;
- b)- secure and lasting co-operation based on a freely negotiated and legally binding contract;
- c)- permanent dialogue by ACP countries, through 3 joint institutions: i)-ACP-EC Council of Ministers, ii)- ACP-EC Committee of Ambassadors, iii)-ACP-EC Joint Assembly;
- d)- Overall, flexible co-operation using the full range of aid and trade development instruments.<sup>93</sup>

In addition to Aid, Development, Financial and Technical co-operations, in relation to trade it provides :

- duty and quota -free access to the EEC market for almost all ACP exports
- guaranteed purchase by the EEC market for almost all ACP exports
- funds for trade promotion and development.<sup>94</sup>

One of the main principles of the Lome' Convention has been to allow the ACP agricultural products to enter into the EC market free of customs duties and other charges such as quantitative restrictions.<sup>95</sup> On their side, the main obligation of the ACP countries is to apply the principle of non-discrimination in their relations with EC member states.<sup>96</sup>

The present section focuses on the practical implication of the Lome' conventions

as a model of relationships between EC and third world countries with regard to agricultural trade provisions. Its basic principles are: duty and quota free access to the EC market for almost all ACP exports, coupled with non-discrimination<sup>97</sup> and non-reciprocity. The treatment of ACP agricultural and food exports (the only ones which do not benefit from entirely free access), although already preferential, has been further improved by the reduction of existing restrictions on some forty products, several of them such as molasses, sorghum, millet, rice, fruit and vegetables of considerable importance to ACP countries.<sup>98</sup> In return the ACP countries are required to extend only MFN treatment to EC countries. Certain criticisms exist of the overall practice of the EC under the Lomé' Conventions. Some writers believe that the Lomé' Conventions are a device to secure the present and past industrial countries interests. For example, Zartman<sup>99</sup> believes that the main aim of the EC treaty particularly Articles 133-135 was to secure certain interests for EC member states: <sup>100</sup>

Although French and other EC states may justify the continuation of their relationship with their old colonies under development aid etc., such a practice is in contradiction to the MFN principle, since the other developing countries have also a right to benefit from special preferences accorded to French colonies.

It is worth mentioning that the place of the Lomé Convention within the GATT system is currently under review by a GATT panel established in 1992. Lack of reciprocity between the EC and the ACP states indicate that the arrangements do not fall within Article XXIV. However it has been argued that the Convention should be examined '*in the light of the totality of the objectives*' of the GATT.<sup>101</sup>

There was a level of disappointment with the nature of EC concessions. The speech of the President of the ACP Council of Ministers during the signing ceremony of the Lomé' II, reflected this:



we could not escape a feeling of deep frustration that the EEC could not finally respond positively to our legitimate claims of unhindered access for our agricultural products, insignificant as they are, to the European market." <sup>102</sup>

In reply to this frustration Article 130 (2)(b) Lome'III.indicates that:

if during the application of this convention, the ACP states request that new lines of agricultural production or agriculture products which are not subject of specific arrangements upon the entry into force this convention should benefit from such arrangement, the Community shall examine these requests in consultation with the ACP states.

The Article also refers to the treatment applicable to agricultural products by indicating that;<sup>103</sup> products originating in the ACP states under certain conditions, "shall be imported into the EC notwithstanding the general arrangements applied in respect of third countries in accordance with the following provisions;...." The Article further states that the EC shall take the necessary measures to ensure, as a general rule, granting more favourable treatment than the general treatment applicable to the same products originating in third countries to which the MFN clause applies. In other word the ACP countries should receive more favourable treatment than any other party involved in a bilateral trade arrangement with EC, even other developing countries who are not an ACP members.

#### **a- Access to EC markets**

The Lome' IV negotiations took place at the same time as progress towards the completion of the Community's internal market were quickening. Talks of a '*fortress Europe*' fuelled ACP fears of a more protectionist Community after 1992. The trade provisions of Lome' IV are supposed to eliminate such fears. Existing unrestricted access to the EC market for the vast majority of ACP agricultural exports is maintained, and the EC offers significant new concessions for a number of agricultural products, more liberal rules of origin and a promise of post-1992 protection for ACP bananas and

liberalisation for rum. In addition, there are promises for renewed efforts to develop the ACPs' processing capacity in agricultural products.

It must be noted that the demands of the ACP countries for totally free access for all agricultural and processed agricultural products, irrespective of whether or not they are subject to the CAP, have not been met. However, the level of concessions given to ACP countries are more generous than any other EC arrangement with a third country. There is an inherent conflict between the demands for market access by ACP countries and the present structure of the CAP. The latter is characterised by an element of protectionism (as EC preference) which sits uneasily with demands for totally free market access. This is so despite the fact that in many areas of agricultural trade the EC and the ACP states are not in direct competition. Consequently one of the aims of the developing countries is to persuade the EC countries to break down the structures which operate to exclude their products from their markets and their domestic support system.

#### **b- GSP and Lomé Convention**

Generally speaking the beneficiaries of EC preferences may be seen as Mediterranean countries, the ACP countries under the Lomé', and other countries being in association agreements with EC. Preferential treatment applies to a very broad groups of products such as all industrial and all non-competing agricultural products. The coverage and margin of preferences is determined by factors other than potential comparative advantage. The most important factors are:

- a)- former colonial ties; these were partly responsible for the Yaounde' and Lomé' Conventions and the Mediterranean Agreements;
- b)- proximity; Africa and the Mediterranean region tend to be more preferred than Latin America and Asia. This means that there are more advantages in a regional or local deal.
- c)- the structural position of a particular industry or its important role in the EC. If the

situation of such a hypothetical industry is structurally weak, it may, as a sector, be protected by relatively high tariffs, quantitative restrictions and subsidies.

Since 1982, the ACP states requested more favourable and genuine EC preferences for them such as:<sup>104</sup> preferential treatment to strawberry imports during the off-season in Europe or to examine<sup>105</sup> the effect of the increase in the co-efficient used to calculate the variable component of the import levy on processed cereal products, in particular wheat, bran and wheat residue. Lomé III responded to those requests in the following terms:

...the Community shall, in the context of the special nature of ACP-EC co-operation, examine on a case-by-case basis the requests from the ACP States for preferential access for their agricultural products to the EC market...<sup>106</sup>

One of the practical features of the Article is that developing countries need to make a request for equal preferential treatment from the EC countries. This means that the ACP countries need up-to-date knowledge of the market and adequate expertise to raise cases, otherwise their competitors are able to benefit from the situation. First class lawyers, economists, diplomats and managers are needed to establish an adequate system of continuous market intelligence and other related instruments to pinpoint weaknesses and submit, when necessary, cases against other competitors. Unfortunately similar to other developing countries, many ACP countries are deficient in this respect.

On the other hand it should be realised that granting such preferences to ACP countries generally does not harm the EC internal market, since all safeguard measures are already taken into consideration. An example case is when on the base of the above request, preferences were granted to strawberry products that allowed a 60% reduction of custom duties from 1st. November to the end of February within the limits of 700 tonnes. However, this preference is extended to all states and it does not solely benefit ACP states.

Despite the widespread application of preferences for agricultural products in

relation to ACP countries, the share of ACP in the EC agricultural imports from developing countries has actually declined since 1975.<sup>107</sup> Such a decline has happened despite the fact that in all Lomé Conventions there were provisions which called for trade promotion efforts. It means that these provisions are not sufficient to contribute to the growth of the ACP's agricultural export.<sup>108</sup>

Twitchett<sup>109</sup> notes a need for substantial investment in quality control, efficient local market improvement and regional trade arrangements as a practical solution to these problems.

It is possible to conclude that the present trade provisions of the Lomé Convention to some extent have contributed to maintain and increase the volume of trade between the ACP countries and EC. However, in practice the preferences given to the ACP over third world exporters have been small because most ACP exports are primary products which would in any case enter into the EC market at low or zero tariff rates. Some believe that the Lomé Conventions have been an arrangement for trade continuation rather than trade development. In addition, Lomé Conventions have maintained EC access to ACP- markets (on the MFN basis) and have encouraged a continuing flow of ACP agricultural products to the EC.<sup>110</sup>

#### **c- STABEX system a way of financial support for Lomé products.**

One of the main demands of ACP states during the Lomé negotiations was guaranteeing stable, equitable and remunerative prices in the EC market for their main products. Their hope was that these measures would increase their export earnings and provide funds for development. Protocol 22 recognised such a mood by indicating that:

The Community will have as its firm purpose the safeguarding of the interests of all the countries referred to in this Protocol whose economies depend to a considerable extent on the export of primary products.... .

Later, the EC offered a guarantee, albeit limited, of stabilising the export receipts

from certain primary products exported by the ACP to the EC. The scheme, which was to become known as STABEX, was one of the reasons why the Convention was hailed as a new model for relations between industrial and developing countries. Article 16 of the first Lomé Convention lists the aim of the scheme as being to remedy :

....the harmful effects of the instability of export earnings and ...thereby enable the ACP States to achieve the stability, profitability and sustained growth of their economies.<sup>111</sup>

Certain criteria were set for selecting products, stabilisation of export earnings of certain primary products exported by the ACP on which they are dependent and eventually are affected by price and /or quantity fluctuations.<sup>112</sup>

This system became of increasing importance for many ACP countries as a result of the downward trend of agricultural commodity prices. It has been thoroughly overhauled and improved in several ways. It is considered as a major innovation in the sense that the EC guarantees the ACP countries certain minimum returns on the export of specific raw materials to EC countries. The STABEX covers about 50 products, including many agricultural commodities such as coffee, cocoa, tea and sisal. In addition the EC committed itself, despite its high degree of self-sufficiency, to taking an annual 1.3 million tonnes of raw sugar at the price obtaining on the internal EC market.<sup>113</sup>

The application of the system means that most of the exports by ACP countries to the EC are subject to a kind of protection from the fluctuation of world commodity markets which helps to secure a stable basis for their development.

It is possible to use the STABEX as a practical model for stabilising the agricultural trade of developing countries in the GATT system. It requires an accurate assessment of the present situation of agricultural products in the GATT system in order to draw a stable framework for securing certain sales and compensating the developing countries losses.

## ***D- JAPAN'S AGRICULTURAL TRADE POLICY AND ITS EFFECTS ON DEVELOPING COUNTRIES.***

### ***(1) General background***

As a GATT signatory, Japan has subscribed to the liberal principle of open trade, comparative advantage and respect for the economic interests of other countries. To this extent Japan, EC and the US find themselves substantially in agreement.

Japan has been one of the fastest growing industrial countries. Evidence for this fast growth is the annual rate of 1.5%, of agricultural production. On the other hand, agricultural imports have been growing at 7.9% Such a six fold increase made Japan the world's largest food importer in the early 1980s.<sup>114</sup>

The Japanese agricultural system has its own distinctive feature. The protection of farmers is very high as a share of all fiscal expenditure. A distinctive feature of Japanese agriculture is the small scale of its farms. Considering 1982 figures, in terms of scales of operation, even with access to the latest techniques, Japanese farmers would not be regarded as efficient by the standards of other industrial countries.<sup>115</sup>

This creates special problems in relation to agricultural policy in Japan. In view of the small number of workable farms, some of which may be part time, 60% or more of full-time farms are probably not workable in the light of the above conditions. As a result Japanese policy in agriculture in relation to industrial and developing countries may be different from the policies of other industrial countries. In the other words, Japan may demand more protectionist policies to keep its farm activities.

Japanese agricultural trade policy, based on the 1961 Agricultural Basic Law, has encouraged promotion of the farm sector by having two objectives:

a)- to raise productivity so that the gap of productivity between agricultural and other industries can be reduced and;

b)- to enable farmers through increased farm income to enjoy equal standards of living with workers in other economic sectors. This means that like other industrial countries, Japan needs to support her agricultural population. As a consequence Japan has used various measures to protect domestic agriculture by using particular instruments such as: direct subsidies, credit, investment grants and market intervention.<sup>116</sup>

#### **a- Customs Duties:**

Figures on Japanese agricultural trade policy concerning customs duties indicate that:<sup>117</sup> i)- a number of items are subject to zero duty, ii)- the rate goes up as the degree of processing increases, iii)- comparatively lower duty rates apply to grains, fresh vegetables, oilseeds, some tropical products and meats, iv)- comparatively higher rates or non-ad valorem duties are set for certain meats, milk products, certain fruits, sugar and sugar products. The reason for applying higher rates for the later categories are, high internal production and vice versa for former categories. Similar to other industrial countries Japan committed herself to reduce or bind its base tariff rates, especially in favour of developing countries.<sup>118</sup>

#### **b- Import Quotas**

Japanese agricultural import policy is carried out on a commodity by commodity basis, taking into account the specific nature of each product. A total of 29 items of agricultural and fishery products are subject to an import quota system in Japan, of which 22 items are counted as commodities affected by quantitative restrictions applicable to them, excluding security and other purposes (so-called non-liberalised commodities).<sup>119</sup> The quota is normally 'global,. Import quotas are either '*general*' or '*special*'

#### **c- General Quotas**

There are three ways of quota allocations in Japan,

i)- Purchasing by the government or by statutory bodies: rice, wheat and barley by the

Food Agency; designated milk products and beef.

ii)- Allocation to trading companies: applicable to commodities for which the specification of the particular users is difficult or is not required. In such allocations, special factors as the actual import quantity of the specific commodity or similar ones during a given period in the past are taken into account.

iii)- Allocation to users; this aims to prevent misappropriation of the imported commodities and to secure a stable supply to the user manufacturer, tender or processor. These three different approaches seem suitable for developing countries since the size of the import requirement is small and may be difficult to estimate.

#### **d- State trading practices**

As stated before, in this approach the government takes charge of all transactions relating to certain commodities. There are six items of farm commodities subject to state trading in Japan: Rice, raw silk, barley, wheat and muslin, butter, milk and cream are covered by the scheme.

#### **(2) *Japan and protection policies***

There are similarities between the non-profitable situation of Japanese agricultural activities and many developing countries. Perhaps to overcome the problem of non-profitability of the agricultural sector, the level of protection for the farming population is high. Japanese consumers have had to shoulder much of the burden of domestic agricultural support policies. It was estimated that each consumer spends an additional \$290 annually on food to maintain agricultural support. This is nearly twice the per capita costs that consumers in the EC have had to bear to support their agricultural sector. It is another example for developing countries that they should not cut their farm support even if they do not gain short term interests, in order to protect jobs and rural communities.<sup>120</sup>



Bearing in mind the highly protectionist nature of the farm sector in Japan, there are a number of initiatives within the agricultural policy that could be applied in developing countries. Their granting different loans such as '*Agricultural Moderation Loan*', '*Natural Disaster Relief Loans*' and loans from the '*Agricultural Improvement Fund*' helps farmers.<sup>121</sup> An agricultural insurance policy also gives a degree of protection to Japanese farmers. It applies to a number of products such as, rice and grains, livestock, fruit and fruit trees, potatoes and sugar crops insurance, greenhouse insurance, and covers farmers' house insurance.<sup>122</sup> It is possible to consider the application of many of these policies for supporting farmers in developing countries.

### **(3) *Agricultural trade relations with developing countries.***

The substantial demand of agricultural commodities as a result of relatively small scale farming indicates the vital need for Japan to import from the outside world, particularly regional developing countries such as ASEAN countries. Japan is the single largest importer of agricultural products in the world, though never a significant exporter in any major farm product after World War II. As a consequence Japan considers it necessary to rely on imports of agricultural commodities and has applied certain measures to stabilize the imports of such products. Furthermore, Japan has realised that one of the possible ways to achieve such objectives is to have a positive participation in international commodity agreements and to support development plans in developing countries.

Table NO. 10

Japan's trade with major developing and the total industrial countries: 1986		
Developing Regions	Imports from %	Export to %
LATIN AMERICA	4.8	4.1
Brazil	1.5	0.5
Mexico	1.1	0.5
ASIA	23.3	20.0
Hong Kong	0.9	3.4
Korea	4.2	5.0
China	4.5	4.7
Taiwan	3.6	3.8
India	1.0	1.0
Pakistan	0.3	0.4
AFRICA	1.3	1.4
OIL PRODUCERS countries	14.1	4.4
INDUSTRIAL Countries	56.5	70.1
Total	100.0	100.0

The main source is UN Commodity Trade Statistic 1986 Series D Vol.XXXVI, No.1-4, New York, 1987, but the design and selection of figures is mine.

Table No. 10 gives a clear picture of Japanese farm deals with major developing countries of the world. It also shows the total amount of these trade exchanges in comparison to the deals with industrial countries. Among the former group, certain Asian countries (especially China, Korea and Taiwan) will benefit more from exports to Japan. The oil producers have the same advantages but it is mainly due to their agricultural exports but also to the high demand for oil in Japan's industries. In comparison the same groups of countries have the biggest shares of these exports, while the industrial countries receive more than 70% of Japanese exports.

Considering the extreme level of agricultural protection and relatively high degree of food prices in the Japanese market, if Japan liberalises its agricultural import policies, such changes would affect the fragile economy of developing countries with its effects varying according to the level and the type of commodity that they export to Japan. Those who are dependent on exporting rice to the Japanese market would benefit more than other developing countries. Similarly industrial countries, especially the US, will gain from such liberalisation, particularly on rice exports to Japan.<sup>123</sup>

In 1987 the US lodged a complaint at the GATT concerning import restrictions on twelve relatively minor agricultural commodities. The GATT panel concluded that Japan has no grounds to continue applying such restrictions to ten of the twelve commodities, and consequently Japan agreed to reduce the restrictions within a scheduled time framework.<sup>124</sup>

Being one of the strongest industrial economies of the world, Japan has some commitment to food and development aid to developing countries. The notable feature of food aid from Japan is that commodities subject to aid are often purchased from other developing countries. For example Japan purchased all the quantity required for food aid from Asian developing countries during the period 1974 to 1978. Even in 1982 when Japan held several million tonnes of surplus rice domestically, it bought about 0.1 million tonnes of rice from Asian countries and 77,000 tonnes of US wheat on top of 97,000 tonnes of Japanese rice in order to fulfil its commitment to food aid towards developing nations.<sup>125</sup>

Perhaps this policy will help those developing countries who are selling their commodities to Japan in this scheme, but it would be more helpful if such purchases were based on a secure commodity agreement rather than a temporary and infrequent

sale. Here there is a contradiction between managed and regulated trade. A beneficial and effective support system to developing countries should be based on a regulated trade pattern rather based on a managed<sup>126</sup> trading system currently in practice by many industrial countries.

The Japanese approach could be contrasted with other food aid approaches, such as the EC approach in the Lomé Conventions that is generally based on buying guaranteed supplies for a certain period of time. It gives them marked access facilities for certain times, depending on the availability or production of similar products in the industrial (importing) countries. In the Japanese approach two groups of developing countries may benefit from the scheme, that is, the receivers of the food aid and the suppliers of such commodities who are selling their products to Japan for that purpose. This food aid policy is more acceptable since its operation ends criticism that the industrial countries are dumping their surplus products in the name of food aid to developing countries.

### ***CONCLUDING REMARKS TO THE CHAPTER***

In examining the perspectives of developing and industrial countries in the GATT, the first question which may arise is the relation between industrialisation and development. It must be realised that until not so long ago, it was widely believed that industrialisation was the key to economic development, that once the process of industrial expansion has picked up momentum and reached a certain stage, modernisation of other sectors of the economy would follow more or less automatically. In recent years it has become abundantly clear that development cannot be achieved simply by building factories. A real and comprehensive development is one in which the agricultural sector

plays a leading and substantial role. It is now generally realised that development is more than economic development and that agriculture should function as an important basis on which the process of development is to be founded.<sup>127</sup>

Political changes in the world raise other questions on the equal bargaining position of the early GATT founders and the theory of '*reciprocal and mutually advantageous*' agreements. In such a situation the inclusion of Part IV of the GATT was inevitable. This inclusion in itself does not solved any substantial problem but must be implemented in line with other development objectives of the GATT and by full and mutual co-operation of all industrial and developing countries. The examination of the industrial countries' agricultural trade policy towards developing countries gives a clearer picture of the policies adopted by industrial countries for a relatively long period of time.

The fundamental question that may be raised here is the effectiveness of the existing GATT provisions in eliminating the obstacles and barriers of developing countries agricultural trade in industrial countries markets .

Despite all these difficulties, expansion of world agricultural output and the consequent decline of demand by developing countries has been explained in terms of the sudden expansion of world output resulting from improvements in technology in industrial and developing countries, such as the so-called Green Revolution, and the change of policies in the developing world. Some countries tried hard to secure some gains in total production and trade. A good example is Indonesia's promotion of self-sufficiency in rice,<sup>128</sup> Vietnamese self-sufficiency and even over-production in tea, coffee and cacao<sup>129</sup> and Iranian self-sufficiency in wheat and potatoes.<sup>130</sup> Until recent years Iran was among the big markets for wheat exports from industrial countries.

Although there are many provisions calling for the promotion and protection of developing countries agricultural trade with the outside world, in practice industrial

countries have been able to either to ignore these rules or to find escape routes to discharge their responsibilities, as well as using their legislative powers for protectionist rules against cheap imports from the third world.

There has been growing awareness in the industrial world of wider political linkage between trade issues with developing countries and other issues such as immigration. There have also been negative developments as far as industrial countries are concerned, such as bilateral arrangements from which developing countries are excluded. Similarly developing countries have made some positive moves toward bilateral deals and regional arrangements among themselves that have had relatively successful outcomes.

The other negative move is directed towards certain newly industrialised developing countries under the '*graduation*' doctrine<sup>131</sup> that constitutes a threat of some new trade restrictions for products of these countries in industrialised markets not offering liberalization in their trade policy. The TR negotiations provide a certain degree of credibility to the threat of conditional MFN treatment by industrialised countries.<sup>132</sup>

On the base of what has been discussed, regional customs unions could have substantial advantages for developing countries. Their structural difficulties in applying modern techniques such as adequate packaging, cooling systems and transport facilities, to be able to send their commodities to long destinations could be resolved. Regarding the protection of the farm sector, the experience of some developing countries shows that similar to industrial countries, the protection of farmers has vital effects on the self sufficiency of these countries, especially in production of grains and other agricultural commodities. Despite the high level of protection in the EC, still food and food products constitute an important part of its external trade.

In recent years the share of food imports to the EC from third countries has been decreasing sharply; while the share of EC foodstuff exports to third countries amounts

to 11% in the late 1980s'. In its exports to developing countries this share has risen somewhat to 10 per cent in 1986. Consequently the position of the EC in world agricultural trade has changed fundamentally over the last two decades: traditionally being a net importer, the EC is now a net exporter of agricultural products. These can be treated as a direct result of protectionist policies of the EC which leads not only to self sufficiency but also to over production in many agricultural products.

At the same time agricultural subsidies are expensive: they create large distortions in world markets for farm products and act as a drag on overall economic growth. Agricultural policies in industrial countries alone cost consumers about \$245 billion in 1989.<sup>133</sup> International pressure through the GATT talks, coupled with domestic budget pressures, provides the best way to gain support for domestic farm reforms, since a significant part of the cost of national farm programmes is inspired by the need to offset the policies of other countries including developing countries.

It can be concluded that the US and EC have a similar goal of increasing farm income by using similar price support policies to achieve that goal. These policies have encouraged over production, generated surpluses and government stocks, and resulted in large government expenditures. These impacts have been more severe in the EC.<sup>134</sup>

Despite the fact that the application of the industrial protectionist model has many adverse effects on the agricultural trade performance of developing countries, it is ideal for EC countries, since it has secured their markets from cheap imported agricultural commodities. This is a direct result of protectionist policies of industrial countries in combination with their industrial superiority.

The overall stand of industrial countries in the negotiations follows their national policies. They do not give any concession or change their positions without considering the overall economic consequences. The industrial countries collective policies and approaches derive from the same calculated approach.

Although there are many different factors such as the level of production, the size of farming units, technical differences and trade advantages which vary between industrial and developing countries, some agricultural trade policies adopted by industrial countries could be adjusted and applied by or to developing countries. Considering the similarity of farming structure with developing countries, Japan’s trade policy is a good example for this purpose.

All industrial countries have some commitments to assist developing countries. This is partly a way of securing their own supply of food and agricultural commodities, because a good rural and agricultural structure enables the developing countries to produce commodities at a competitive price. Both industrial and developing countries should make positive moves towards a more constructive and co-operative trade policy relationship.

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## NOTES TO CHAPTER FOUR

1. See Bovard James, in '*The Fair Trade Fraud*' ( St.Martin's Press), in Newsweek 27 Jan. 1992, quoting Sen. John Taylor (1982).
2. At the same time I have tried to minimise the extent of repetitions. For example the Lome' convention may be examined from three different dimensions, a) as the biggest customs union in the world subject to Article XXIV, b) as a collective and practical approach regarding the agricultural trade arrangements bearing preferential and duty free system. c) a practical example of industrial and developing countries' development and agricultural trade relationship. This is why the Lome' conventions arguments are considered on more than one occasion.
3. Walley John, *Special and Differential Treatment, Agriculture, and the Developing Countries in the Uruguay Round*, In Nurul Islam and Alberto Valdes (eds.) '*The GATT and the Developing Countries*' , International Food Policy Research Institute, Washington, (Sep. 1990).
4. See GATT activities, *Annual Review of the Work of the GATT*, Geneva, (1974), p.8.
5. Dr. Khan K.R lectures in *International Law of Development*, Masters degree classes in Edinburgh University, reproduced from cassette tapes, (1989).
6. One of the arguments in the Uruguay Round of trade talks included an understanding relative to the interpretation of Article XVIII, section B. See, '*Press Summary of the Uruguay Round Agreement*' issued on Dec. 14, 1993 by GATT, available in LEXIS, Nexis Library, Drexec File.
7. Leutwiler, Fritz ,*Trade Policies for a Better Future* , The '*Leutwiler Report* ' , the GATT and the Uruguay Round, Martinus Nijhoff, Lancaster, (1987), p.81.
8. GATT, Article XVIII(4).
9. 'GRADUATION': It is the process by which special treatment under GATT provisions and GSP is withdrawn from formerly less developed countries. A number of developing countries are now a significant force in world trade. In 1984 Eight of them- Saudi Arabia, Taiwan, Korea, Hong Kong, Brazil, China, Mexico and Singapore- ranked among the world's top 20 exporters. Consequently, the industrialized countries are becoming increasingly reluctant to make unrequited concessions. A major issue today is graduation- the concept that advanced developing countries should assume increasingly higher levels of obligations in GATT and eventually graduate out of the developing country category. See more in Lunt, Gregory O., '*Graduation and the GATT*': The Problem of NICs, *Colombia Journal of Transnational Law*, Vol.31, (1994), p 3.
10. See Dam Kenneth w. *The GATT, Law and International Economic Organization*, University of Chicago Press, Chicago and London, (1970), pp.227-228, and Hudec, Robert E., *Developing Countries in the GATT Legal System*, Trade Policy Research Centre, Gower, UK, (1987), pp. 25-33.
11. For more information see J.H. Jackson, *World Trade and the Law of GATT*, (1989), p. 650.
12. Supra, No.9.
13. Supra No. 9. For more informations see also; Todaro P Micheal, *Economic Development in the Third World*, fourth ed., Longman, New York, (1989).

14. In order to minimise the confusion and conflicts in relation to the beneficiaries of certain aids in multilateral or bilateral negotiations, the donor states initially agreed that the receiver countries would *self-elect* themselves. Thus any country could indicate that it is a developing country and thereby qualify itself as a beneficiary under GSP. This *self-elect* concept soon led to difficulties as some of the comparatively advanced developing countries claimed a beneficiary status, Later this designation came under criticism by industrialized countries, especially by the US.

15. At July 1993, the US, EC, Japan and Canada, which together account for about 65% of global exports and 63% of global imports, agreed to reduce their mutual tariffs to zero in several product areas.

16. The Economist, *Free trade's fading champion*. 'Uruguay round of talks on General Agreement on Trade and Tariffs' il v323, (April 11 '92) p.65(2).

17. Zepter Bernhard:(ed.) *Prospects for the UR The Declaration of Punta Del Este*, GATT and Conflict Management. Westview Press,(1990), p.104.

18. See more in: Fishlow Albert and Stephen Haggard, *The US and the Regionalisation of the World Economy*, OECD Paris, (1992).

19. Asia-Pacific Economic Co-operation (APEC), initiated by Australia in 1988 and taking a broadly inclusive view of the region. Hong Kong, Taiwan and China attended the 1991 meeting in Seoul, a reflection of some of the opportunities for wider co-operation that may emerge as a result of the end of the Cold War

20. GATT, Article XXIV paragraph 4.

21. Wilcox Claire, *A Charter for World Trade*, New York: MacMillan, (1949), pp. 70-71.

22. See also, Haight F.A *Customs Unions and Free Trade Areas under GATT*, in 6 J.W.T.L., (July-August 1972), pp.15-26

23. This issue will be discussed in more detail in this Chapter .

24. For example the Chinese and Japanese people have similar traditional food and local vegetables consumption that is similar to those of other East Asian countries.

25. See Evans John W. *The Kennedy Round in American Trade Policy*, The Twilight of the GATT, Harvard University, (1971), P.120.

26. In the data, the EC countries are counted as a single unit.

27. Evans John W. 'The Kennedy Round in American Trade Policy, The Twilight of the GATT,' Harvard University, (1971), p.120.

28. GATT, *BISD*, 10 th Supp. Geneva, (1982). p.135.

29. Ibid, p.143.

30. Ibid, p.144.

31. GATT, *BISD*, 15th Supp., Geneva, p.67.

32. GATT, *BISD*, 16th Supp., Geneva, p.12.

33. See GATT, *BISD*, 7th Supp., Geneva, (1959), p.29.

34. Those products were, vegetable oils and seeds, tobacco, cotton manufactures, tea, coffee, jute manufactures, raw cotton, timber, etc.

35. Quantitative restrictions according to the definition in *Geddo v. Ente Nazionale Risi* (Case 2/73 [1973] ECR 865) at p.879, are defined as a measure by Member States limiting by value or amount the importation or expansion of a particular product.

36. See more details in *supra* No. 28, p.28.

37. The *Action Programme* was recommended to the Ministerial Meeting of May 1963 and initially was sponsored by 21 countries. The programme consists of: 1)- A call for standstill provisions to prevent new tariffs and other barriers against export of developing countries. 2)- Elimination of remaining quantitative restrictions by industrial countries within one year, or not later than December 31, 1965. 3)- Duty -free entry for tropical products to be achieved by December 31, 1963. 4)- Elimination of tariffs on primary products. 5)- Reduction and elimination of tariffs on exports of semi-processed and processed products from developing countries by at least 50 percent over three years. 6)- A progressive reduction of internal taxes and duties on products wholly or mainly produced in developing countries. 7)- An annual report to ensure implementation of the Action Programme.

38. The Committee arrived at the following conclusions:

- (i) only few of the tariff concessions made in the GATT rounds up to then had been on items considered at the time to be of export interest to the developing countries;
- (ii) tariffs on manufactured products of interest to the developing countries were generally higher than duties on items exported by the developed countries;
- (iii) tariffs in developed countries discriminated among the developing countries on the basis of origin as a result of such arrangements as Commonwealth preferences or the preferences granted by the newly-created European Economic Community to its African associates;
- (iv) the tariff structure in the developed countries discriminated against the development of processing industries in the developing countries;
- (v) quantitative restrictions were at least as damaging as tariffs in terms of both their levels and their structure; and, (vi) various other measures in the developed countries (such as internal taxes) also discriminated against exports of the developing countries.

39. In this respect a working party was established to consider the granting of preferences by industrial countries on selected products from developing countries, but this was not included in the programme of action.

40. GATT, *BISD*, 10th Supp, p. 185, and *BISD*, 11th Supp., pp. 170-75.

41. The proposal for a '*Programme of Action*' put forward by Argentina, Brazil, Burma, Cambodia, Ceylon, Chili, Cuba, Ghana, Haiti, India, Indonesia, Federation of Malaya, Federation of Nigeria, Pakistan, Peru, Tanganyika, Tunisia, United Arab Republic, Uruguay, Yugoslavia. See GATT, *BISD*, Sup.11, p.204.

42. These countries were: Brazil, Chile, Egypt, Greece, India, Israel, Korea, Mexico, Pakistan, Peru, Philippines, Spain, Tunisia, Turkey, Uruguay, Yugoslavia.

43. See full details in; Leutwiler, op. cit. No.7.

44. GATT, *Trade Policies for a better Future*, The '*Leutwiler Report*', Proposal for Action, (the original report), Geneva, (March 1985).

45. This is a sad scenario that was repeated in more than a 100 developing countries in the world, since in many of them there was an enormous immigration from rural areas to major cities, especially many capital cities with a population of around 10 million, Cairo, Calcutta, Daka, Jakarta, Rio de Janeiro, Tehran, and Mexico City are among them.

46. According to the interpretive notes and supplementary provisions of Article XXXVI(8), the phrase '*do not expect reciprocity*' means that less-developed contracting parties should not be expected, in the course of the negotiations, to make any contribution which is inconsistent with their individual development, financial and trade needs.

47. Article XXXVIII(2)B. This is another indication of the inter-relationship of the role of other international agencies and organizations in the area of agricultural trade, that were already indicated in chapter one of the thesis..

48. Dam, K, *supra*, No. 10, at p.237.

49. GATT, *The Tokyo Round of Multilateral Trade Negotiations*, Report by Director-General of GATT, Geneva (April 1979), p.99.

50. For more information on GSTP see, Hudec (1989), *op. cit.* No 10, and K.R. Khan '*International Law of Development and the Law of GATT*,' in F.Snyder and P. Slinn (eds.) *International Law of Development: Comparative Perspectives*, London, (1988), p. 188.

51. See Gerrit, Faber: *Trade Policy and Development*, Brookings, UK,(1990).

52. See also Hudec, Robert E. *Tiger in the House: a Critical Appraisal of the Case Against Discriminatory Trade measures*, in: M. Hilf and Petersman, Ulrich Ernest, (eds.) Kluwer Academic Publishers, (1991), pp. 180-207.

53. The Morocco, Tunisia, Mauritius and Multi Fibre Bilateral Agreements can be counted as examples.

54. These restrictions on preferences or on trade in general vary according to the hierarchy of preferences; they are less restrictive for the more preferred countries.

55. See Teunissen Hans and Niels Blokker, *Textile Protectionism in the 1980's: The MFA and the EC's Bilateral Textile Agreements with Developing Countries*, in: C. Stevens and J. VerLoren van Themaat (eds.), *EEC and the Third World: A Survey* (5), London, (1985), p.76.

55. An example of these limited preferences are those given by EC to ACP region on the base of Lome' Conventions.

57. A relatively recent court decision upheld such a discriminatory withdrawal, affirming the unreviewable, 'at will' character of this power. See *Florsheim Shoe Co. v. US*, No. 83-1371, 5 BNA IRTD 2385 (Feb. Cir., 12 July 1984).

58. The '*Gray area measures*' will be explained and dealt with in Chapter Five.

59. The GATT decision of 14 November 1968, *BISD 16 th spp.* p.17.

60. See '*Toward a new Trade Policy for Economic Development*', Report by the Secretary General of UNCTAD, New York (1964), p.66, as cited in O. Lang, *Law and its Limitations in the GATT Multilateral Trade System* (1987), p.31.

61. See the discussion of the Cairns Group in Hamilton, C. and J. Whalley, '*Coalitions in the Uruguay Round: The Extent, Pros and Cons of Developing Country Participation*, Weltwirtschaft Archiv, (Sep. 1989), p.135.

62. Canada had different views from other Cairns Group members in these three subject areas.

63. GATT, *Newsletter 'FOCUS'*, NO.103, (Nov. 1993), p.5.

64. Some similar cases such as sugar, are discussed in '*Courier*', EC-ACP Countries bimonthly Periodical, on *Development and Co-operation*, No.6 (1990), pp.5-9.

65. See supra No. 63, p.5.

66. It is possible to add the Nordic countries (Norway -Sweden- Iceland and Finland) to this category but it is not possible to discuss their policies in this chapter. This categorisation is based on the recent GATT practice and the way in which industrial countries represent their ideas in the negotiations.

67. This on average represents over 8% of the population, but there are considerable differences from one member state to another. Whereas 30% of the working population in Greece is employed in agriculture, the corresponding figure for countries such as the Federal Republic of Germany, Luxembourg, Belgium, the United Kingdom and the Netherlands is less than 5%.

68. These countries are; Denmark, Greece and Ireland. For the US it is about 13% and for Japan and all non EC European countries it is almost 5%.

69. The most remarkable case is, however, China, whose agricultural output is estimated to have increased 31% between 1980 and 1984. The source of production data used in this section is primarily from the US Department of Agriculture, (1986a, 1986b, and 1986c), cited in Bellamy M. and Bruce Greenshields, in bibliography list, p.90.

70. See World Bank yearbook 1986, Rome, p.45, cited *ibid*.

71. In addition to massive immigration of rural populations of developing countries to major cities, the sudden change of rainfall, contributed to the drop of production. For example it was announced that, owing to the lack of rainfall in 1993, the farmers of one whole province of I.R. of Iran (Boshehr), have lost their total harvest that comprises of 94000 hectares of rainfeed wheat, and 6000 hectare of barley, this is the story in many southern provinces. Quoted from the statements by Director of the Boshehr Province Public Relations in, '*Islamic Republic Newspaper*, Year 15, No. 4322 p.5.

72. Also a study by the US Department of Agriculture's Economic Research Service projected an increase of 40 million metric tons in grain imports by the third world countries during the 1980s (White, Mathia, and Overton 1986,143). In comparison, regarding the African countries, imports have decreased substantially in the 1980s.

73. The waiver decision specified certain conditions and procedures, including that the USA should submit an annual report to GATT covering any modification or removal of restrictions since the previous report, restrictions currently in force, the reasons why such restrictions (whether or not covered by the waiver) continue to be applied, and steps taken during the reporting period towards resolving the problem of surpluses of agricultural commodities.

74. Roningen and Dixit (1989), *supra* No.70, estimate that comprehensive farm trade liberalization would have a positive net trade balance effect for the US, although trade volume in several product sectors would fall. Overall, the US economy would also experience a large welfare gain from agricultural liberalization.

75. See Robert S. Ingersoll in Martin Feldstein (1998)(ed.), *The United States in the World Economy*, New York, (1989), p.146.

76. The latest US approach in the region was directed towards more engagement with the Asia-Pacific Economic Co-operation (APEC), initiated by Australia in 1988. Hong Kong, Taiwan, and China also joined APEC in 1991.

77. According to official United States sources, the depressed economic conditions in Latin America resulted in a loss of US exports of as much as \$1 billion between 1982 and 1988. Statement by USTR in OAS Assembly, as reported in SELA, Initiative for the Americas, Caraballeda, (6-8 Feb. 1991), Working Paper No.5.

78. Benefiting in differing degrees exports from Bolivia, Colombia, Ecuador, Peru and Venezuela.

79. See, *GATT Activities 1990*, GATT publication, Geneva, p.108.

80. For a comprehensive review of recent US regional agreements see Fishlow Albert and Stephan Haggard, *The United States and the regionalisation of the world economy*, OECD Publications, Paris, (1992).

81. The impasse in the Dairy Quotas case was followed in 1955 by the US demand for a complete waiver from GATT obligations in this area. For the terms of the waiver and the working party report explaining it, see, *GATT, BISD, 3rd supp.* (1955), pp.32 & 141.

82. For example pesticide residue controls and the 1989 embargo on fruits from Chile.

83. For example see; Usher J.A., *Legal Aspects of Agriculture in the European Community*, Clarendon Press, Oxford, (1988), and Mc Mahon Joseph A, 'European Trade Policy in Agricultural Products,' Martinus Nijhoff, London, (1987).

84. Paolo Cecchini (et.), 'The European Challenge 1992'. The Benefits of a Single Market, Aldershot, Wildwood House, (1988), p.84

85. Algeria, Cyprus, Egypt, Lebanon, Malta, Morocco, Syrian Arab Republic, Tunisia, Turkey, and Yugoslavia.

86. Hong Kong, Indonesia, Malaysia, Philippines, Republic of Korea, Singapore, Taiwan, Thailand.

87. Excludes Caribbean countries and territories (which are included in ACP).

88. The main countries known as: Bahrain, I.R. of Iran, Iraq, Kuwait, Oman, Saudi Arabia.

89. See *Trade Development Report (TDR) 1990*, part one, chap.III, sect. A., and *TDR 1989*, part one, chap.III, section.B, UNCTAD, TDR, UN, New York, (1991) P.68.

90. These three countries are collectively called as 'Maghreb' countries which in Arabic means 'West'.

91. These three countries are collectively called 'Mashreq' countries which in Arabic means *East*.

92. An extensive review of these bilateral relations of EC and Mediterranean countries especially with Lebanon could be found in A. Haydar, *Ph.D thesis*, Glasgow University, (1991).

93. In addition to many other features the main arrangements of the convention in the area of trade is as follows: i)- duty and quota-free access to the EC market for almost all ACP exports ii)- guaranteed purchase by the EC of up to 1.3 million tones of ACP sugar at EC prices. iii)- funds for trade promotion and development.

94. Lomé IV, *Background, Innovations, Improvements*, Commission of the European Communities, (March 1990), p.1.

95. Article 2 Lomé I and Lomé II. Article 130 of Lomé III. See the *Courier*, No.89, (Jan. - Feb.1985), p.32 .

96. See *Ibid*, text of Lomé III Article 136, p.33.

97. Article 136 Lomé III Convention, the *Courier*, No.89, (Jan- Feb. 1985).

98. See *Ibid* Article 130.

99. Zartman, I.W., '*Europe and Africa, Decolonization or Dependency*' in *Foreign Affairs*, Vol.54, No. 2 (Jan.1976), pp.325, 327.

100. Part IV of the Rome Treaty was designed to share among the European six, at least to some small extent, the burdens and benefits of the colonial past and to provide some limited benefit for the African colonies. It was a means for protecting colonial markets and assuring supplies of primary products, *Ibid*.

101. See GATT, *BISD 23rd supp.* pp.46-47.

102. Bernard St. John H, Article in, *Courier No. 58*, pp. 4- 5.

103. See '*Effects and Prospects of EC-ACP Trade and Trade Policy Relations*', (the Kiel Study) *The Courier* No.98, p. 77.

104. See :*The 1982 Annual Report of the ACP-EC Council of Ministers*, p.7.

105. This request was met at Lomé III which allowed for a 60% reduction of custom duties from 1 November to the end of February within the limits of 700 tonnes.

116- *Supra* No. 103, p.32.

107. See The Kiel Study, in *Courier No.98*, (Jan- Feb. 1985), pp. 61-91. Table 6: Change in the Market Shares and regional Concentration of ACP Export to the EC, 1975 and 1982, p.67.

108. Although there were many calls for giving more agricultural trade assistance to ACP countries overall effects are minimal. For example Lomé II emphasised: 'to assist [the ACP countries] in their efforts to resolve problems relating to rural development and the improvement and expansion of agricultural production for domestic consumption and export and problems they may encounter with regard to security of food supplies for their population.'

109. See Twitchett *Patterns of ACP/EEC Trade* in Long F. (ed.), *The Political Economy of EC Relations with ACP States* (1979), pp. 145, 171.

110. In practice, when the ACP countries demonstrated that their products received less favourable treatment than those of other third world countries, as in the case of tomatoes, they persuaded the Community to take appropriate action. On the other hand, the EC Commission has consistently maintained that it was willing to review the situation of any ACP products or industries damaged by EC restrictions; however, it has required firm statistical evidence of such damages which the ACP often found difficult to compile.

111. See OJ (1975) L 25/ 1.14.

112. Many agricultural products such as groundnut products; cocoa products; coffee product cotton, coconut, palm, and palm nut and kernel products were among them.

113. The ACP countries were able to export nearly 40'000 tonnes of beef a year to the EC at a fraction of the normal import levy in addition to the above arrangement. See: '*A Common Agricultural Policy For the 1990s.*' Periodical No. 5/1989 European Documentation, Fifth edition, Luxembourg, (1989), p.42

114. The growth was most striking for cereals and meats. The volume of total cereal imports rose 5.8 times in 1960 -83 and coarse grains 12 times. Imports of meat increased from 38 to 630 thousand tonnes in the same period.

115. See White papers of Japan, 1981-82, *Japan Institute of International Affairs*, Tokyo, (1983), p.105.

116. Some of the support is budgetary and the taxpayers bear the cost, while some is built into the price system, so that the cost falls on consumers.

117. 1982 figures cited in: OECD, *National Policies and Agricultural Trade*, country study, Japan, Paris (1986), table 32, p.169.

118. For example in the course of the Tokyo Round, Japan committed itself to reducing or binding the base tariff rates for 198 farm, forestry and fishery items, along with an agreed '*staging scheduled*' for a period of 8 years.

119. Five of these items are categorised as state trading commodities, and three items fall under the category of 'general exceptions' in the GATT regulations. See for more details supra No.117, table No. 33, p. 170.

120. Bellamy Margot and Bruce Greenshields(eds.), '*Issues in Agricultural Development Sustainability and Cooperation*' IAAE Occasional Paper, No.6 UK, (1992), p.89.

121. For a comprehensive study of these loans and Japanese agricultural trade policy see supra note 117.

122. Ibid.

123. Regarding the high tension between US and Japan over rice imports to Japan an interesting story happened when in 1991, 10 lb of US rice was sealed in tiny bags and displayed in a glass case. It had been cleared by Japanese customs since it was part of an 'educational' display for a food exhibition in Tokyo. No matter: Japanese rice farmers said the display was a violation of the Law banning imported rice.

The US were told that the electricity supply for their stand would be turned off unless



they removed the rice. They said no, and infuriated the Japanese still further by handing out stickers that said, 'Have a rice day' Finally, the US ended the story under instruction of their embassy. See, Not a rice day' *Japan trade regulation on American rice import*" v. 318, The Economist (March 23, 1991), p.36.

124. Wall Street Journal, 6 Jan. 1988; and New York Times, 22 July 1988, cited in Bela Balassa and Marcus Noland, *Japan in the World Economy*, Institute for International Economics, Washington DC, (1988), p.56.

125. For more information on development of International Co-operation for Agriculture and Food see: OECD -DAC, '*Development Cooperation Review*', various years.

126. Managed trade, or a fix-quantity regime: Is to be contrasted sharply with *trade management*, which refers to rule-making trade negotiations and enforcement of negotiated trade rights and obligations, all of which complement, sustain and expand the scope of a *fix-rule regime*. Bhagwati Jagdish, *The World Trading System at Risk*, London, (1991).

127. See more in, Bale, M., and Lutz, E., *Price Distortions in Agriculture and their Effects: An International Comparison*, '*American Journal of Agricultural Economics*', Vol.No.1,(1981), pp.6-22.

128. Ibid.

129. This was announced in the press conference of Vietnam Foreign Ministry on 4th May 1993, during his visit to Tehran.

130. See Kayhan Havai, *International weekly magazine*, Published in Tehran, (Persian) March 9th 1994, p.11.

131. A number of developing countries are now a significant force in world trade . In 1984, 8 of them-Saudi Arabia,Taiwan, Korea, Hong Kong, Brazil, China, Mexico and Singapore-ranked among the world's top 20 exporters. Consequently, the industrialized countries are becoming increasingly reluctant to make unrequited concessions.

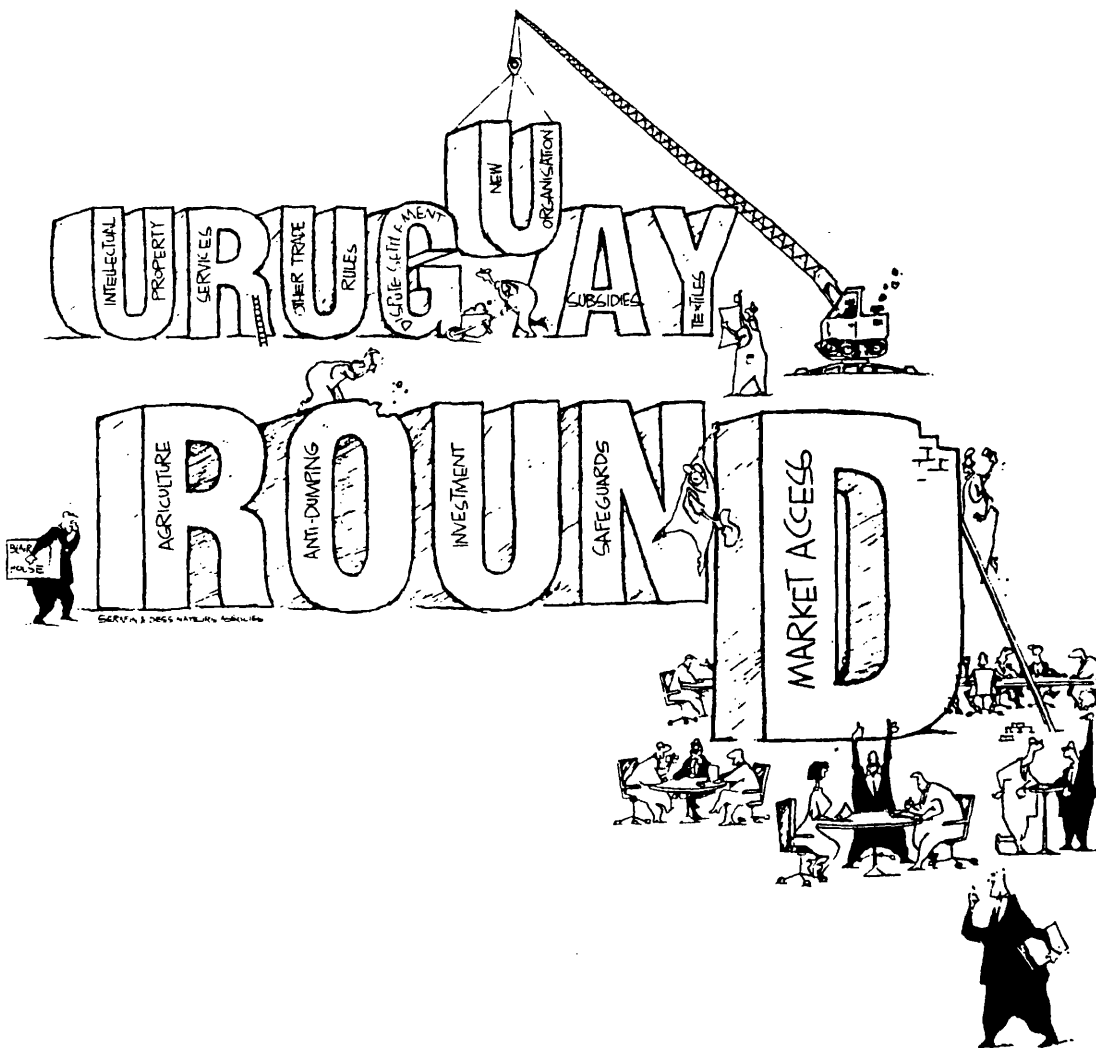
132.See: Supra No. 9.

133. See: Financial Times, 15 June (1990), p.3.

134. Both group have followed a mixed surplus disposal strategy, with one key difference-the EC has used export subsidies to dispose of part of its surplus on the world market.

## CHAPTER FIVE

### THE URUGUAY ROUND (1986-93)



Another artistic expression of final phase of Uruguay Round Multilateral Trade Negotiations :  
Source; GATT, Focus Newsletter, No. 103 GATT, Nov. 1993.

## Introduction

**'....trade wars, once they start, have a dangerous momentum of their own. There is no way of predicting their course or their end. It is easy to adopt a measure either to assert one's position or to establish a basis for future negotiation. But it is much more difficult to control the clamour for such measures and close to impossible to remove them in the short term.'**<sup>1</sup>

This Chapter considers the progress and outcome of the final phase of Multilateral Trade Negotiations (the Uruguay Round), from its inception in 1986. The purpose and the aim of the study is to examine the agricultural trade problems of developing countries in the light of the recent multilateral trade negotiations and the substantial amount of work done by the negotiating group on agricultural trade.

The Chapter is divided into five sections. The first Section introduces the launch of the UR by the Punta del Este ministerial declaration and the major elements of agricultural trade in the Round.<sup>2</sup> This is followed by an overview of the overall state of agricultural trade problems noting the issues relevant to developing countries. Section Two will deal with a summary discussion of the leading industrial countries' agricultural trade proposals and policies in the negotiations, particularly the EC and the US. The importance of the Cairns group of agricultural exporting countries contribution to the negotiations is also examined.

In practice, the UR negotiations offered not only a major opportunity for developing countries to raise their voices, but also a challenge. Section Three is devoted to developing countries' proposals and policies in the Round. The UR negotiation was

intended to provide the third world with an opportunity to compete on a more equal footing in the international agricultural trading system. Concern exists as to how international food prices and trade will react to a less controlled trading regime. It is important to note how international institutions and governments find out the possible consequences of liberalisation for agricultural trade in the Round.

Section Four deals with questions such as: what are the trade effects of a successful resolution in liberalizing agricultural trade ? If, as a result of the UR negotiations, the price of grain and other food commodities rise, how serious will the implications be for developing countries that are net food importers? In the case of net exporters, what are the possible opportunities and gains? Can we be confident that the UR results have produced a new initiative in the existing pattern of dispute settlement on agricultural trade issues ?

The fifth section of the chapter concentrates on the decisive package of measures in the Round, especially the final '*UR Agreement on Agriculture*', (FAA) and its impact on developing countries. Owing to the substantial number of issues in the Round agenda, the main emphasis of the chapter is on the substantive relevant points of views, impressions and suggestions of the contracting parties, rather than a description of almost seven years of claims and counterclaims by them. This Chapter focuses on the way the issues and the conflicts were dealt with in order to find substantive solutions for agriculture trade problems of developing countries.

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## ***I. THE OVERALL STATE OF THE AGRICULTURAL TRADE PROBLEMS IN THE ROUND .***

### ***A-THE LAUNCH OF THE UR NEGOTIATIONS***

The UR was envisaged, with an assumption that developing countries would play an effective role in it, in part in the wake of unfinished business in the TR (1973-79). Many notable issues had remained then unresolved, especially in critical areas of agricultural trade.

Following the initiative of a group of industrial countries, the ministerial meeting of contracting parties was held in November 1982 to assess the results of the TR and discuss outstanding issues facing the global trading system. A further factor in determining the launch of the UR was, in part, concern over growing protectionism during the economic recession of 1981-2.

Some countries saw the meeting as the beginning of a process aimed at starting off a new round of multilateral negotiations. The developing countries were not entirely reassured by the manner in which the TR negotiations had been conducted, and anticipated that their interests might not again be taken into full consideration.<sup>3</sup> Another important concern in the 1980s was the growing tension in international trade relations, especially in the agricultural sector. Long standing conflicts of interests, which had been the major cause of failure in agricultural trade negotiations in previous rounds, had persisted.

In pursuing the long-term objective of agricultural reform, consideration may be given to social and other concerns, such as food security, environment protection or

overall employment, which have not only economic dimensions. But in practice any progressive correction of policies to achieve the long-term objective will require a suitable period of time, and the real intention and commitment of the parties to change the situation.

Considering the rising disputes in agricultural trade, Dale Hathaway<sup>4</sup> emphasized in 1987, the controversy over agricultural trade disputes damaged the credibility of the GATT discipline in overall trade. Agricultural trade disputes also threatened trade in other products; retaliation would not necessarily be limited to '*like products*'<sup>5</sup>. It might be extended to other products of interest to the defending parties. Against such a background, substantive results in the agricultural trade negotiations were expected for a universal success of the UR.

Despite all the ambiguities surrounding the launch of the round, many people hoped that this new attempt would make substantive progress in tackling developing countries' agricultural trade problems and "integrate agriculture more closely into the global trading system".<sup>6</sup>

### ***B-THE PUNTA DEL ESTE MINISTERIAL DECLARATION***<sup>7</sup>

Each ministerial declaration in the recent Rounds tended to reflect the intentions of the parties to put new initiatives into action. They specifically called for a reform of the GATT provisions on agriculture with better treatment and fuller participation of developing countries in the negotiations. Dead locks developed after each round, which were finally broken by the US compromise of abandoning its demands for reform.<sup>8</sup> In practice, in those Rounds, most of the prospects for major reform in agricultural policies were regretfully put aside for the next round of multilateral trade negotiations. In contrast, at the beginning of the UR, a fundamental reform in the GATT agricultural

trading regime was stated as a high priority. Against this presumption, as in previous experiences, the negotiations quickly deteriorated into a conflict of wills between the two major players, the US insisting on reform of the EC Common Agricultural Policy and the EC refusing to do so.

One of the main ambitions of the UR was to solve deadlocked issues remaining from previous Rounds and to build a consensus with respect to the conflicting views and interests of all parties. As discussed in the introductory chapter of the present thesis, the Punta Del Este Ministerial Declaration (1986) presented the aims and desires of the participants in broad terms. The Contracting Parties agreed on the urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions to trade, including those related to structural surpluses so as to reduce uncertainty, imbalances and instability in world agricultural markets.<sup>9</sup>

Among other things the Declaration encouraged the Contracting Parties to take appropriate steps on three broad issues: 1)- Reduction of import barriers, 2)- Increasing control over direct and indirect subsidies affecting agricultural trade; 3)- Minimising the use of sanitary and health regulations as a form of trade barrier.

Subsequently the negotiations were aimed at achieving greater liberalization on trade of agricultural products to bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines. In order to achieve the above objectives, the '*Committee on Trade in Agriculture*' was obliged to follow the recommendations proposed by all participants and develop them in accordance with the GATT 1982 Ministerial Work programme adopted by the Contracting Parties. Account was to be taken of the approaches suggested in the

work of the Committee.

At the start of the UR negotiations the question was whether the Round would follow the traditional pattern (of previous Rounds) or seek a different approach with a genuine intention for reform by the contracting parties. One assumption was that unless substantial sacrifices of interests by big players were made, a repetition of past disputes would be inevitable. The long continuation of the Round was a clear sign of the extension of the old conflicts of interests.

### ***C-THE NEGOTIATING GROUPS IN THE ROUND AND THEIR MAIN PROPOSALS .***

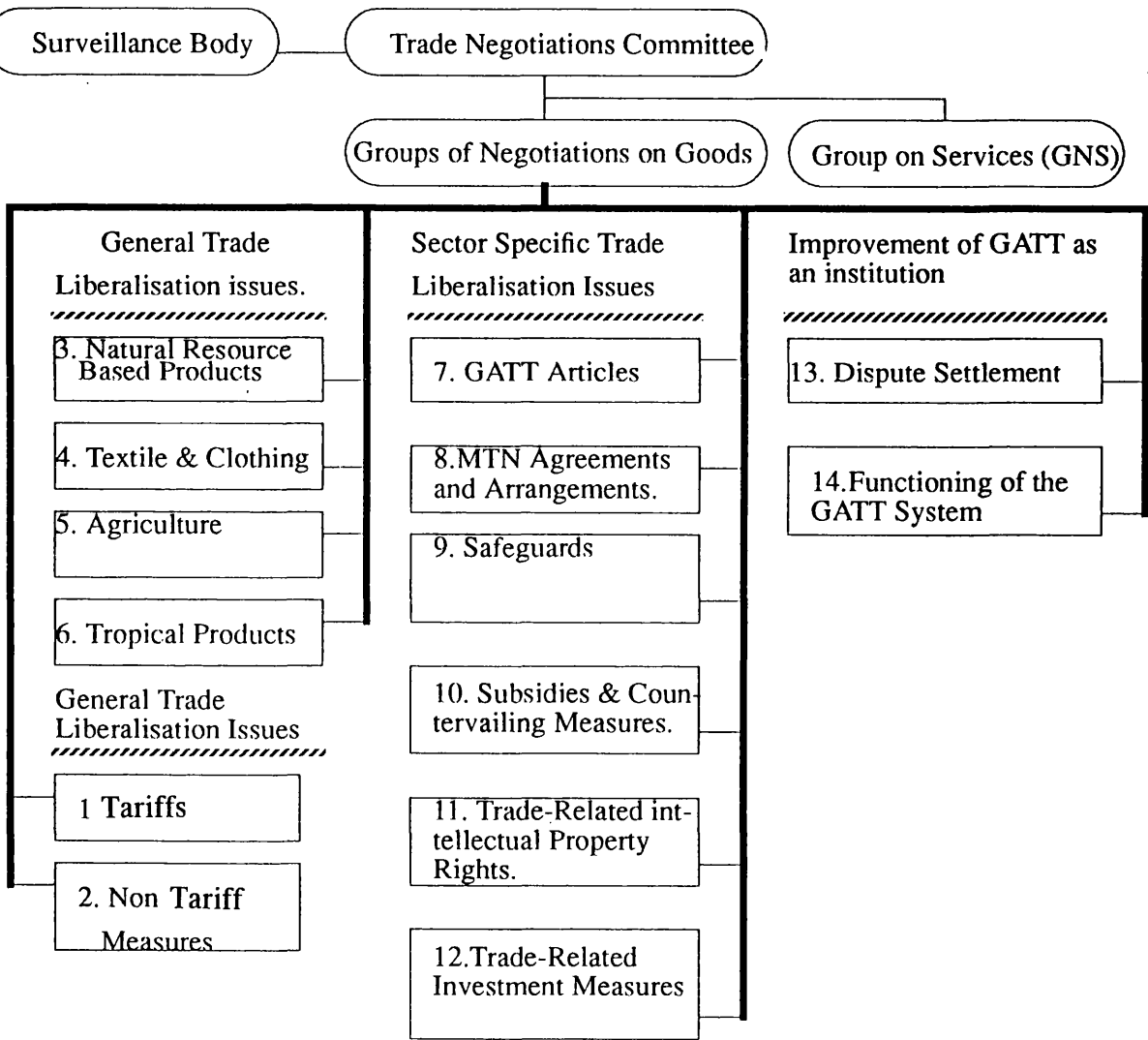
In the UR negotiations it is possible to distinguish two major groups: a group of negotiations on goods and another on services. The first group may be classified into four different areas: a)- general trade liberalization issues, containing 2 out of 14 committees. b)- sector specific trade liberalisation issues, comprising 4 main sectors including agriculture. c)- improvement of the GATT legal framework with 6 committees and d)- improvement of the GATT as an institution covered by 2 committees. Thus, the negotiating tasks were divided among 14 different committees excluding the surveillance body that applies to all GATT activities. Table 11 on the next page is representing the negotiating committees in UR Multilateral Trade Negotiations.

Although the agriculture committee was specifically devoted to agriculture group, a number of other related committees were also applicable to agricultural trade issues such as '*Tropical Products*', '*Subsidies and Countervailing Measures*', '*Safeguards*', '*Tariffs and Non-Tariff Measures*' which in one way or another were linked to agricultural trade.



TABLE NO. 11

The GATT negotiation committees in Uruguay Round



See (GATT Secretariat): From Anna Murphy, The European Community and the International Trading System Volume 1, Completing the Uruguay Round of the GATT, (1990),P.45

The UR negotiations were carried out by a *Trade Negotiations Committee* (TNC) under the chairmanship of the GATT Secretary-General. For the first time, the negotiations included reference to domestic policies as well as border protection measures. All the proposals proposed binding commitments by contracting parties in the UR negotiations.<sup>10</sup>

This helped to classify different subjects of the negotiations for individual discussion, but in practice there were some technical difficulties as to the nature of each committee. For example, Committees No. 1, 2, 7, 8, 9, 10, 13, and 14 were allocated to general issues (subjects) and did not represent any specific goods such as agriculture etc. On the other hand the Group of Negotiations on Services was treated as a separate category of negotiations. It seems that the intention of the drafters of the UR agenda, who were mainly from industrial countries, was to give more weight to trade negotiations on services by placing it under an individual heading. This is further evidence of how industrial countries may influence the decision making authority of the GATT to suit their own interests.

In the course of UR the EC, US, Cairns Group,<sup>11</sup> Japan, Nordic Countries and Developing Countries<sup>12</sup> were considered as the most influential groups. It should be realized that there was no official categorisation of these groups; their groupings were mainly based on the fact that the countries had common interests with a collective response to the issues on the agenda.

A number of proposals were submitted on how to deal with agricultural trade issues that reflected the ideas and expectations of individual participants from the negotiations and were influenced by the policy and perspectives of other interested contracting parties. In practice the main struggle was between two distinctive groups as

the supporters of reform and the proponents of restraint.

The reformists demanded the removal of agricultural exceptions from current GATT Article XI and XVI; by phasing out all gray-area practices, Grandfather Clauses exceptions,<sup>13</sup> waivers; and eventually prohibiting domestic subsidies that create trade distortions. The advocates of restraint were opposed to any changes to the GATT rules which would remove the present agricultural exemptions or prohibit any national policies. Instead, they suggested that national policies in the agricultural sector are legitimate and should be allowed to operate, provided that the levels of protection and support granted under such policies needed to be restricted. The reformist group was led by the US and the Cairns Group, who shared similar ambitions.

The leading proponents of the restraint policy were the EC, supported in philosophy if not in detail by Japan, the Nordic Group (Sweden, Norway, and Finland), Switzerland, and Austria. The main area of confrontation lasting until the end of the Round focused on two major players, namely the EC and the US .

Between these two major opposing groups, there was obviously little room for any independent policy or practical manoeuvre by developing countries, except for those agricultural exporting countries which were amongst the Cairns Group, or some individual developing countries whose export interests were in harmony with one of the two groups.

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## II. THE INDUSTRIAL COUNTRIES

### *A- THE EC POLICY, PROPOSALS AND EXPECTATIONS*

It should be realised that each individual EC member state has different levels of dependency on the agricultural sector.<sup>14</sup> For example amongst the EC countries, the Netherlands is a country characterized by intensive farming, and its value of output per hectare is ECU 7700 compared to a total EC average of ECU 1900.<sup>15</sup> It clearly shows high incomes for the farmers in this country in comparison with the other EC members. This is why the levels of opposition or resistance against cuts in farm subsidies are different in EC countries, with the French farmers being most opposed to any radical reductions of state subsidies. The EC had important interests in overall economic and trade objectives of the Round. The EC proposal for negotiations in the Round contained four essential elements:

- 1)- coordination of action to stabilise markets in sugar, cereal and dairy products.
- 2)- significant cuts in the levels of support over an agreed period and achieving a better balance between different commodities;
- 3)- using Producer Subsidy Equivalent (PSE)-type measures for monitoring, with adjustment for supply control and exchange rate variations; 4)- strengthening GATT rules to consolidate advances .

The EC believed that negotiations on agriculture should tackle the root problems affecting world agricultural markets, i.e. the imbalance between supply and demand, while allowing the maintenance of agricultural activity to adapt to a changing environment and taking account of the development needs of the various parties to the negotiations.<sup>16</sup>

In reality some EC policy makers believed that reducing uncertainty and

widespread instability on world agricultural market would enable the balanced implementation of a collective farm policy reform that requires:

- i) better control of production by appropriate means, including the phased reduction of support which directly or indirectly affects trade in agricultural products;
- ii) an increase in the sensitivity of agriculture to market signals;
- iii) a change in methods of income support for farmers to make greater use of direct aids not linked to output.<sup>17</sup>

In practice the EC policy makers had other instruments to reduce farm support, such as setting aside of a specific portion of fertile lands by farmers.<sup>18</sup>

### **1) The EC policies towards developing countries.**

The EC applied special policies toward developing countries in the Round, by pushing them towards the application of '*across the board*', binding duties. These binding duties were suggested under 20-35% depending on the current level of duties and specific needs of these countries. The EC recognized that such duties may be bound at '*ceiling rates*', whereby actually applied duties may have been much lower. The EC asked the developing countries to sign the GATT Codes on Non-tariff Measures (for example on import licensing procedures or methods of valuation of goods for customs purposes).

Regarding tropical products, which are of specific interest to developing countries, the EC offered to make radical cuts, aiming to reach a degree of total elimination of duties which cover a variety of products of interest to developing countries.

### **C- US POLICIES AND EXPECTATIONS**

In the course of the UR each industrial country tried to pursue its own policy line in order to get maximum benefits and reach its particular goals and objectives in the negotiations. In practice, the US followed a policy of trade unilateralism, expressed in several ways. To justify some irregular trade practices, the US claimed that in the

past bad deals from the multilateral trading system had placed them at a disadvantage. The US believed that "*America, in short, must use its economic strength for its own good, not for everybody else's*".<sup>19</sup>

In connection with the US policy in the Round, the question was raised, why such priority was given to agriculture? Part of the answer lies in the domestic policies of the US,<sup>20</sup> since for many years the agriculture sector had been the backbone of the open trade lobby in the US economy. The US GATT trade policies arrangements with other contracting parties came under four main headings:

a)-Regional trade deals. In these ambitious projects, the US put forward strong alternatives for the creation of its own trade policy measures to keep them under control, but at the same time tried not to breach the GATT rules.

b)-Bilateral trade arrangements. This is an ever-expanding category and, since such arrangements are always called '*voluntary*' in name, the GATT is unable to discipline them effectively. The most notable are '*voluntary*' export restraints (VER's) and similar measures. In the GATTs' recent review of US trade policy, 47 such arrangements were counted.<sup>21</sup> As indicated in Chapter Three, such regional arrangements generally reduced the GATT's credibility. The US is in favour of these arrangements especially in the agricultural sector, contrary to the liberal trading environment that the GATT advocates.

c)- Anti-dumping and countervailing duties. These apply when a foreign supplier is found to be '*dumping*' its goods into the US market,<sup>22</sup> if this is found to cause '*injury*' to US producers. Even under GATT rules, duties can be levied on imports.<sup>23</sup>

d)- Section 301 of the US Trade Act 1974 actions. This Section authorises the Administration to take action to enforce US rights under international trade agreements and to combat foreign governmental practices which the US government concluded to be discriminatory or unreasonable and to burden or restrict US commerce. When it

comes to the GATT, it permits unilateral action to be taken by the US against its trading partners, without the prior authorization of the Contracting Parties.<sup>24</sup> In other words this part of US trade law authorises the government to identify unfair trade practices and punish the perpetrators. This has led to criticism that the application of the measures violates GATT rules.<sup>25</sup> The first US '*unilateral*' action was launched in 1985 through more active use by the Administration of section 301 of the 1974 Trade Act.<sup>26</sup>

Justifying the application anti-dumping and countervailing duties, the US claimed that its domestic producers had suffered serious injury. As indicated in Chapter Two, there is a need for a proper definition of the term serious injury otherwise, in the absence of a clear definition, it is open to any misuse by contracting parties, especially by those who have both executive and legislative powers for such abuses. If all contracting parties were to adopt practices similar to Section 301 there would be no room for any dispute settlement mechanism or even any international regulatory machinery such as GATT.

Different countries have asked for a promise that the US will not use Section 301 to retaliate against other countries before it has exhausted the GATT dispute procedures, but the US has refused to do so.<sup>27</sup> This refusal to rule out retaliatory action against other trading partners is another indication of US self interest towards other contracting parties and threatens the interest of developing countries.

### **1) The main US objectives**

Within the UR negotiations the US administration pursued the following objectives: 1)-Far-reaching, fundamental reform of agricultural trade, leading to fairer competition and market openings; 2)- Greater market access and lower tariffs and non-tariff barriers for industrial products and other goods by removing all barriers to market

access over a ten-year period; 3)- Rules to protect the intellectual property rights of US entrepreneurs on which their high-technology and entertainment industries depend, and comprehensive rules of fair play for \$560 billions of world trade in services;<sup>28</sup> 4)- In Trade Related Investment Measures, the implementation of agreed rules governing investment and fewer restrictions on the ability of US investors to operate overseas; 5)- An agreement to end trade-distorting subsidies, over a 10 year period, subsidies being the '*unfairest*' of unfair trade practised in the form of government grants to bribe the market, rather than win it on the basis of price and quality; 6)- Effective rules on dispute settlement; subsidies, antidumping, standards, balance of payments (BOP), import licensing, import safeguards and functioning of the GATT system (FOGS); 7)- Lastly, application of the rules of the game to developing countries.<sup>29</sup> In other words full participation of these countries in the global trading system.

To justify the call for application of the rules to developing countries, the US calculated that the full integration of these countries into the global trading system would generate stronger growth for them and could increase US exports by as much as 50% until the year 2000.<sup>30</sup>

These objectives clearly reflect US goals in the Round, but the reality is that many of those objectives can be treated as one sided policies that disregard third parties interests, especially those of developing countries. For example the first four objectives exclusively serve industrial countries' interests. How could the developing countries' agricultural products, particularly cereals, be able to compete with US products? How can poor farmers in developing countries compete and survive, while their respective countries are lowering tariffs and non-tariff barriers and opening their markets to agricultural imports from industrial countries? The indication of 'Market access for industrial products, in a 10 years period', means a gradual destruction of the infant



industries in the third world, particularly those of the South-East Asian new industrial countries. It can be seen in similar cases that the industrial countries have employed all the necessary techniques and expertise to dictate (impose) their own terms and conditions on multilateral trade negotiations.

Among the negotiation areas listed above, three of them, services, TRIMs, and TRIPs were considered as '*new issues*'. The US fully supported the inclusion of them into the UR agenda and believed that their importance to the world economy was beyond doubt, but the main beneficiaries would be industrial countries.<sup>31</sup>

The US tried hard to persuade all Contracting Parties to support the inclusion of the new issues on the UR agenda, and also claimed that US economy had grown faster in the past four decades than in any similar period of their trading history. This is partly because of the high speed expansion of trade in all these new issues in addition to traditional agricultural export earnings. In case of new issues, except for a small number of developing countries which provide these services, the majority of them are the potential losers in the majority of deals in new issues.

Another point which deserves attention is the protection of foreign investment in the third world, without considering the interests of the host state and '*local partners*'. In simple words it means that investors are able to invest overseas without being forced to take any local partner, export a mandated portion of their output out of the host state, use local parts, or meet any number of other government imposed investment restrictions.<sup>32</sup> These are the issues that the developing countries do not accept unless they are compelled to play the unfair '*game*'. Some participants also believed that in return for concessions in the agricultural trade sector, the developing countries should accept the industrial countries terms on new issues.

***D- THE EC AND US CONFLICTS IN THE ROUND***

One of the major problems in the UR, similar to those in previous rounds, was the conflict of interests between the EC and the US.<sup>33</sup> Such a conflict had a major impact on overall global economic relations, especially in the agricultural trade sector. The available economic data and a comparison of the agricultural situation in these two major blocks helps us to understand the reasons behind all these conflicts of interest:<sup>34</sup>

1))- Employment; despite the fact that, since 1960, farm employment in the EC has fallen by 60%, farming is still the main source of income for almost 10 million people in Europe (8% of the total workforce). This contrasts with 3.4 million farmers in the US, (3% of the workforce).

2))- Production capacity; the average size of EC farms is 13 hectares, against the 187 hectares average within the US, which is considerable.

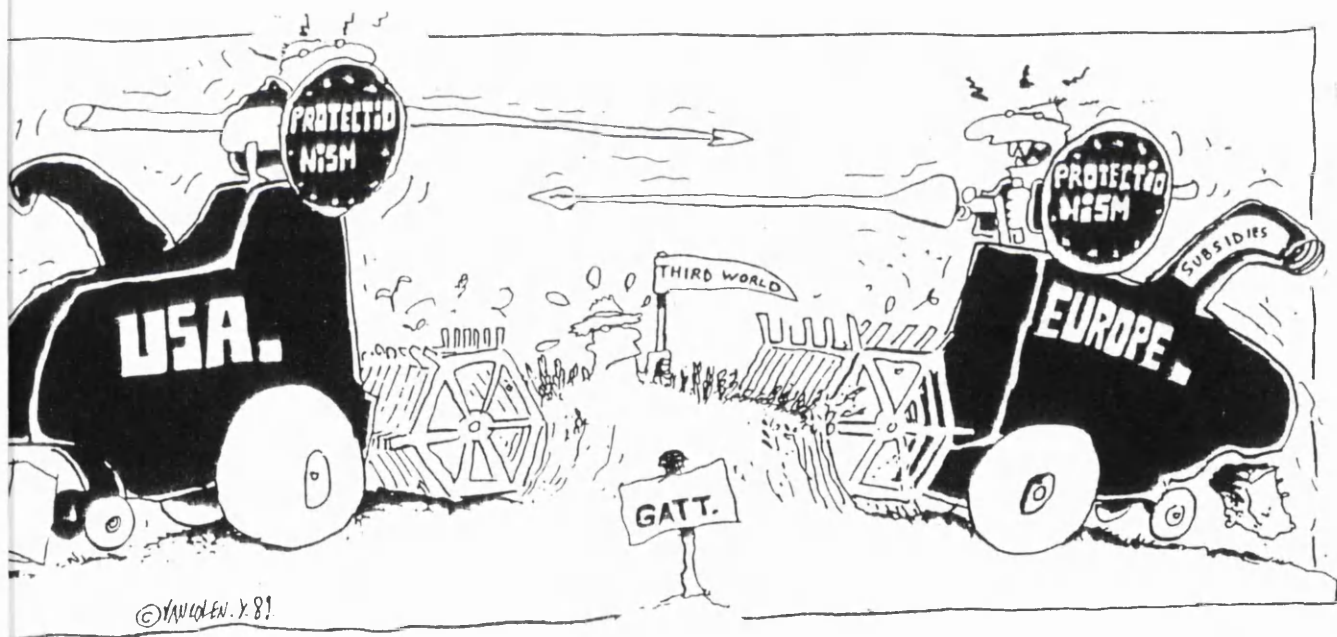
3))- Imports; the EC is considered to be a large net agricultural importer, taking about one fifth of all world food and agricultural exports. It always has a large deficit in its agricultural trade: for example in 1988, it was \$27.5 billion (on imports of \$63 billion against exports of \$35.5 billion), compared with \$18 billion agricultural trade surplus in the US.<sup>35</sup>

4))- Implementing drastic measures only in the EC, such as price freezes and reductions, applying levies on over-production, are envisaged for reducing surpluses and their burden on the EC and national budgets. The situation is also a burden for the EC farmers, many of whom are not happy with heavy income losses during the 80's and more to come.

5))- Surplus production; The US has substantial grain production surpluses that dampen international markets, in comparison the EC has a surplus of over 20 million tonnes of cereals, one million tonnes of milk that accumulated to huge butter mountain stocks, and

international markets, in comparison the EC has a surplus of over 20 million tonnes of cereals, one million tonnes of milk that accumulated to huge butter mountain stocks, and 750,000 tonnes of beef by 1991.<sup>36</sup>

EC underpriced surpluses in agricultural commodities hit America's farm exporters badly, since US farmers who are themselves subsidised and protected, though for most products less so than EC farmers. So, in the UR, the US demanded far-reaching reforms of the EC's CAP.



Visual expression of Trade Wars in Uruguay Round Multilateral Trade Negotiations. Artist Yancolen (1989), taken from the Development and Cooperation Periodical No. 6. ISSN 0723, (1990) , p.9.

### **(1) Two Substantial plans for solving the disputes over agriculture**

Two leading proposals were considered in order to solve disputes between EC and US a)- The '*new plan*', based mainly on the '*Draft Final Act of UR on Agriculture*', was initiated by the GATT's ex-Secretary General, Arthur Dunkel, on 20 December 1991. The Dunkel plan included a solution for cereal products, an area where Europe and US were furthest apart <sup>37</sup>

b)- The second proposal, by Mr MacSharry, the EC Commissioner for agriculture and rural development, was considered as a compromise between reformers and protectionists and known as the MacSharry Plan .

The Dunkel proposal suggested:

-first, a 20% cut in domestic farm subsidies by 1999; -second a 36% cut in the value of export subsidies, in addition to 24% in the volume of subsidised exports. -third, converting into tariffs most quotas and other non-tariff restrictions on farm trade, and then gradually cutting them.

There was a similarity between the MacSharry and Dunkel plans, since both supported a form of direct payment to farmers independently from production for reducing the pressure on farmers.<sup>38</sup> The Dunkel plan contained more drastic measures because it fails to control payments to big producers since the payments were supposed to be paid based on the area of owned land to all farmers.<sup>39</sup>

In practice, the agricultural trade talks became hampered on three main issues. The EC was willing to advance some way towards the above proposal, but in decreasing its protection for farmers, its aim was to rebalance the CAP anticipating a protection increase, especially for some commodities.<sup>40</sup>

In the early phase of the negotiations, the US pressed for cuts in EC subsidies between 75% and 90%; Europe offered cuts of only 30%, from a base year of 1986 (a

device that reduces the offer of future cuts to roughly 15%). The wide gap between the proposed farm subsidies cut was one of the main sources of disagreement <sup>41</sup>

One should ask what the main reasons was for the EC not accepting the US demands. The answer was very obvious; the EC considered the US and Cairns group demands as wholly unrealistic. The US also stressed that direct export subsidies were not the only factor for promoting exports. Opposing this view, the EC believed that other support measures such as the deficiency payments practised by the US had the same effect on production and the market.

The conflict was so intensive that if agreement on any of the elements proved impossible, the whole Round was in danger of collapse. America's negotiators used such a possibility as a threat, gambling that Europe either would deliver a radical reform of its farm policies or let the Round negotiations collapse.<sup>42</sup>

## ***(2) Steps towards a final compromise***

After many bilateral discussions between the EC and US to resolve their differences, on the 20 November 1992 an agreement was concluded to allow the UR negotiations to proceed, and it was considered as a substantive breakthrough. Some elements of this agreement are as follows:

### **a- Internal Support**

The EC believed that subsidies should be assessed by their effect on international trade; export subsidies should remain prohibited and anti-subsidy measures justified only where government aid has a negative effect on trade. In this respect "internal" subsidies, especially those subsidies related to regional development and structural adjustment, were unlikely to distort international trade and should be considered as part of a 'green' list on which no action was required .<sup>43</sup>

The prohibition of internal subsidies, did not even exempt the least developed

countries. The US administration also opposed some contracting parties' views for special consideration of developing countries and considered any subsidies as harmful, whatever their effects might be.

Discipline measures concerning internal support in the UR was based on the Aggregate Measures of Support (AMS), which is a figure that allows economists to express and compare different kinds of government support policies.<sup>44</sup> The proposed Dunkel plan, that considered as a compromise, had four essential elements:

- 1)- 1986-88 was considered as a base year; 2)- internal reduction commitment of -20%;
- 3)- credit from 1986 for reduction of AMS; 4)- proposed duration between 1993-99.

Some of these elements were adopted in the final UR agricultural agreement. For example, elements 1 and 2 were accepted, as the 1986-88 base year and the average global reduction level of 20% for internal support. It should be realised that although the EC endorsed the general idea concerning internal support, it was in practice unacceptable that the income compensation introduced under the CAP reform would be subject to a reduction commitment by the EC. In the end, the EC and US agreed to exempt those types of income support payments which the EC applies under its reformed CAP from the reduction commitments under the AMS. In such a situation it was possible to compensate the EC farmers fully for income losses resulting from price reductions under the new commitments.

#### **b- Market Access**

The main element of any discipline in the area of market access is based on the concept of tariffication. This means that all non-tariff barriers on agricultural products should be transformed into a tariff equivalent and be reduced over time. In this respect the base year and duration of transformation into tariff equivalent remained as above,<sup>45</sup> but the level for all tariffs and tariff equivalents was reduced by an average of 36%

across all product /tariff lines over six years, and was subject to a minimum 15% reduction for any one line.<sup>46</sup> In addition the EC insisted on applying special safeguard mechanisms as an integral part of tariffication.

The EC accepted the overall orientation of tariffication, but objected to the Dunkel Plan as not containing any provisions regarding rebalancing. These provisions are examples of measures necessary to stabilize imports of cereal alternatives or substitutes.

### **c- Export competition**

The discipline on export competition consists of two commitments, one concerning budgetary outlays, the other concerning subsidized export quantities;

- base period average was 1986-90, the duration was again 1993-1999,
- and the reduction budget 36% and the quantities was considered the same 24%.

The EC was also ready to make a specific commitment on subsidized exports but considered the quantities reduction figure of 24% as too high to implement.

In this area the EC and the US agreed to apply a figure of 21% for the quantitative export commitments instead of the 24% proposed in the Dunkel Plan. In addition it was agreed to confirm the 1985 EC commitment not to subsidize beef exports to the Far East market (South Korea, Singapore, Malaysia, Taiwan and Japan).

### **d- Peace Clause**

The adoption of '*Peace Clause*' was suggested as a major step to resolve one of the most controversial and long standing issues between the EC and US over farm subsidies and market access. The EC sought an assurance that the use of different CAP instruments could not be challenged in the GATT after the achievement of an agreement on the agricultural sector. The EC also believed that such an assurance had not been given under the Dunkel Plan.

To set aside differences, both the EC and US agreed on a text whereby the application of agricultural policy instruments of each individual country would not be challenged under Articles XVI and XXIII (nullification and impairment) of the GATT, on condition that the final disciplines of the UR in the three proposed negotiating areas were fully respected.<sup>47</sup> The text, in substance, lays down that:

Internal support measures are exempt from actions undertaken under Article [XVI] of the GATT, as well as actions for nullification and impairment. This latter type of action led to the oilseed panel. Export subsidies are exempt from claims under Article 16 of the GATT. This eliminates the risk of panels.<sup>48</sup>

It should be realised that countervailing duty actions remain possible but are subject to conditions which make them unlikely. It is possible to conclude that for the first time the instruments of the CAP, comprising internal support measures and export refunds measures have been fully recognized in the GATT system .

#### **e- Oilseeds dispute**

As stated earlier oilseed is one of the crucial agricultural commodities for the EC and despite the application of CAP measures such as the payment of subsidies to EC producers by member states, they have not been able to fulfil domestic demands, so are dependent on imports from US and some developing countries.

The EC tried to buy its oilseed products, particularly seed meal and oils regardless of their origin. In addition to US products, the EC market attracted Latin American countries to compete with US producers. Since under the Lomé Conventions, the ACP countries benefited from the general exemption of duties, they then became competitors of US producers.<sup>49</sup> At the same time this situation affected the arrangements under the GATT and General System of Trade Preferences. The table below shows certain advantages for ACP producers to sell their oilseed products in comparison with other schemes.



Table No. 12

Ec customs duties for oils and vegetable fats <sup>50</sup>			
[ Product coverage ]	GATT%	GSP %	ACP %
Unrefined food oils	10	10	0
-palms	6	4	0
-coconut / palm kernel	10	7	0
Refined or particularly refined food oils	15	15	0
-palms	14	12	0
-coconut / palm kernel	15	13	0

Source : FEDIOL, Statistics 1992,<sup>51</sup>

It should be realised that by applying the new liberalisation of tariff barriers under CAP<sup>52</sup> the imports from certain developing countries will increase substantially, for example the imports of sunflower oil from Argentina and palm oil from Southeast Asia.<sup>53</sup> In the latest UR negotiations, the EC and US agreed to set aside their differences on the basis of the findings of two panels reviewing the oilseed dispute. They agreed that the EC would apply the set-aside level resulting from the annual decision of the Community in this respect on a base acreage of 5.128.000 ha. Contrary to what the US requested, there was no supplementary ceiling in terms of tonnage on total production. The EC set-aside for oilseeds can, however, in no case be less than 10%.<sup>54</sup> On the basis of the results it was possible to terminate a dispute which overshadowed the UR for four years in which two major GATT partners came to the verge of a real trade war.

In similar cases the EC countries were very cautious about their agricultural

trade performance, since any change in the pattern of international trade would have effects on their farming populations as well as effects on the ACP countries as their major partners in the agricultural sector. But the EC have some commitments to protect the ACP countries against the consequences of any change in its CAP.

### ***E- THE JAPANESE PROPOSAL AND VIEWS***

In the course of negotiations the Japanese delegation submitted a proposal that was described as realistic. Japan stressed the need to establish long-term stability for trade in agricultural products and to ensure food security for all countries. In Japan's opinion improved market access should be sought by reducing customs tariffs through a request and offer procedure and also by improved criteria for allowing waivers from the general principle of the elimination of quantitative restrictions. Japan also believed that different kinds of waivers, which allow some countries to maintain import restrictions, are a destabilising element, and that the growing concerns of importing countries are not sufficiently taken into account by the rules on export restrictions. Japan also pointed out that in the case of basic foodstuffs any GATT rules should ensure the stability of supply and allow the maintenance of some degree of domestic production.<sup>55</sup>

although the Japanese interests and commitment to agricultural trade negotiations were a clear sign of their concern as a leading industrial country over the issue, some participants considered them as over-cautious in that the proposal laid too much emphasis on agricultural self-reliance, whereas the food security could be obtained by opening up and diversifying markets. Despite their objections, especially from the main exporters of agricultural commodities, the Japanese proposal had its own significance as being realistic to agricultural trade situation in UR negotiations.

### ***F- THE ROLE OF THE CAIRNS GROUP IN THE NEGOTIATIONS***

The '*Cairns Group*' had a collective interest in agricultural trade issues and was one of the leading groups in the UR agricultural trade negotiations. The group presented its fundamental aims in a proposal intending:

a)- to provide the means to achieve fully liberalized trade in agriculture, b)- to abolish distorted agricultural policies and lastly, c)- to secure the necessary undertakings under strengthened GATT rules and disciplines.

The Cairns Group proposal went further by suggesting a long-term framework for agreement and the integration of agriculture into the existing consultation, surveillance, and dispute settlement provisions of the GATT.<sup>56</sup>

The main elements of the Cairns Group proposals may be summarised as follows:

- a)- freezing present subsidies and other distorting measures,
- b)- reducing levels of support over a ten-year period by an agreed amount,
- c)- introducing new strengthened rules for agricultural trade in the period after the phase-down of support,
- d)-using PSE (Producer Subsidy Equivalent)-type measures for monitoring progress.<sup>57</sup>

It is possible to identify two major elements in the Cairns Group plan:

i)- a long-term framework under which, inter alia, market access restrictions would be largely removed (with binding tariffs at low levels or zero) and new GATT rules and disciplines that they wished would be agreed for covering the use of all subsidies and other government support measures affecting agricultural trade. Later the Cairns group elaborated its suggestion for short-term action. They expected countries to agree to a '*down reducing*' of support in any of the next two years by 10%, as measured by Producer Subsidy Equivalents.

ii)-a reform programme involving governmental commitments to phase down aggregate

levels of agricultural support using schedules of reduction for each country to be facilitated by a new measurement of aggregate support, perhaps along the lines of the PSEs.

The US objective of eliminating trade-distorting support was broadly in conformity with the Cairns Group, but the Group argued for short-term actions to reduce surpluses and amendments to GATT rules.

Some of the Cairns group proposals were incorporated into the final Agricultural Agreement of the UR. Such an adoption of the proposals is a sign of how a strong coalition of individual countries with the same aims and interests may be able to change the rules. It can be a good lesson for developing countries in their common goal for more preferential and favourable treatment by industrial countries.

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### **III. Developing countries**

Considering the large number and sheer diversity of developing countries, it is quite clear that in early negotiating rounds the GATT system failed to provide them with a secure platform to raise their voices. It was later, in the course of the TR, that some encouraging steps were taken to consider their interests.

Greater stability of agricultural markets is in the interest of the developing countries. The industrial countries have arranged to cut down barriers to their imports to the level applied to other industrial countries. The EC also was in favour of improving the rules governing food aid since 1971. As a result each importer has been allowed to set quotas and to select the eligible countries for such preferential treatment.

The exclusion of agriculture from most disciplines has especially affected developing countries because agriculture often constitutes their largest sector. On the other hand agricultural negotiations in the UR was dominated by commodities of export interest to industrialised countries, whereas tropical products exported by developing countries were dealt with under a separate trading regime.<sup>58</sup>

The UR Ministerial Declaration again reiterated that special and more favourable treatment be accorded to developing countries in accordance with the terms of the 1979 Framework Agreement . To apply this as a rule the developing countries expected more clarification on certain issues in the UR .

For example, they were not certain whether the negotiations would change GATT balance-of-payments provisions, or the method of their application. Some industrialised countries argued for the abolition of both Article XII and XVIII-B on the ground that in a flexible exchange rate world, neither of these Articles is needed, but at the same time they recognized the improbability of persuading the vast majority of participating countries in the negotiations, especially developing countries, of the beneficial consequences of such action.<sup>59</sup> Perhaps the removal of some relatively beneficial provisions to developing countries may not only solve a problem, but may also widen the gap between industrial and developing countries in the world.

In practice, the developing countries actively participated both on drafting the UR text and also in the course of the main negotiations. There were large contributions to the negotiations by such countries as Brazil, India, South Korea, Singapore and others.<sup>60</sup> Contrary to previous expectations developing countries proved that they could influence the negotiations and indeed exercise their rights and obligations. They were also involved in many joint proposals.

Despite the fact that before and during the UR the developing countries were not

treated as full and equal partners to the GATT system, in the course of the UR nonetheless more than 70 countries took autonomous trade liberalization measures to reduce or eliminate non-tariff barriers. This goes to the heart of two critical questions about the future of the global trading system. The first is to evaluate what developing countries have gained from the final package of measures in the Round and also what developing countries should do now that the Round is completed in order to play a strengthened role in the international trading system ?

### ***A- THE MAIN PROPOSALS***

In addition to the industrial countries' proposals and commitments towards developing countries, there have been a number of proposals by developing countries that received particular attention in the UR that may be categorised as:

#### ***(1) Market access and tariff harmonization***

Egypt, Jamaica, Mexico, Morocco and Peru tabled a formula-cut approach to market access, incorporating factors for tariff harmonization, with the objective of having zero or low tariffs in developed-country markets. They also requested an improvement in the preferential treatment scheme as well as a total elimination of internal consumption and excise taxes on export products of interest to developing countries on an agreed time scale.

#### ***(2) Technical assistance***

There were a number of proposals calling for technical assistance to developing countries. The improvement of sanitary and phytosanitary measures, eradicating plant and animal disease were particularly mentioned.<sup>61</sup> Further assistance was demanded in the form of advice, credit, donations, training, and equipment having direct effects on market access for developing countries' products.

#### ***(3) Increase in financial resources for net food importing countries***

In a global liberalisation scheme, the net food importing countries are the

potential losers. Considering the proposals by the Cairns Group to establish a compensatory scheme for developing countries' losses as the result of application of industrial countries protectionist policies, some developing countries (Egypt, Morocco, Jamaica and Peru) tabled a proposal that increased financial resources be made available to net food importing developing countries. This was proposed to reduce the burden of increased import prices resulting from global agricultural reform, and to enhance their agricultural productivity and production.

The Jamaican delegation highlighted the interest of net importers of agricultural products or those who are heavily dependent on such imports. The application of the UR final agreement on agriculture and reduction in the level of agricultural support and protection brings more chaos and disarray in the short term for food importing countries since they will pay higher prices for their food commodities exports from industrial countries. They will pay particularly higher prices for sugar, red meat and dairy products imports.<sup>62</sup>

In a situation where net food importing developing countries should pay higher prices for their imports, they proposed certain measures to offset unexpected higher bills as follows:

- i)- enhancing purchasing capacity through concessionary sales, including increased availability of low-cost export credits and grants;
- ii)- increasing [the] export earning capacity of net food-importing developing countries, through import market access conditions for their agricultural exports, by immediate tariff and para-tariff reductions, and phasing out or elimination of non-tariff measures or trade-distorting support;
- iii)- increased food aid, through *inter alia*, a flexible approach to the usual marketing requirements, and triangular arrangements which safeguard and promote production and exports of developing countries; and
- iv)- flexibility in structural adjustment programmes which are negotiated with international financial organizations.<sup>63</sup>

In addition the developing countries proposed the establishment of a '*multilateral*

*funding arrangement*'. The main capital funds in this system were to be contributed by industrial countries who will be curtailing their subsidies as a result of negotiations. The fund would remain in force until the net food-importing countries adjust their internal trading policies to comply with the new market situation.

#### **(4) *The loss of preferential access opportunities***

In case of a general liberalisation of market access opportunities in the Round, the developing countries who had previously preferential access would lose their advantages. This was a point for consideration for preferential receivers, mostly developing countries. Honduras, El Salvador, and Guatemala suggested that these losses should be considered as a credit or contribution made by the preference-receiving developing countries to the general liberalization programmes. In such a situation preference-giving countries should consider the need to increase their assistance to developing countries in compensation for the loss of preferential access to their markets. It should be realised that, among the members of regional economic unions, the scope for preferential arrangements will be limited to the extent that common external tariffs are reduced. These regional arrangements may require external assistance to strengthen their systems by other means.<sup>64</sup>

These proposals show a general awareness amongst developing countries and imply very different consequences for the nature of any future GATT rules and discipline on agricultural trade. The range from proposing a radical fundamental change or re-writing of the GATT provisions on agricultural trade, to lesser expectations for short-term commitments on agricultural support measures coupled with a common approach for interpretation of the existing GATT regulations in this area. At the same time they include the intention or common goals and collective approaches of their drafters, mainly developing countries.



## ***A- DEVELOPING COUNTRIES CHALLENGES IN OTHER SECTORS***

### ***(1) Textile and clothing***

Two of the issues of particular importance to developing countries textiles and clothing. They were excluded from the recent GATT negotiating framework under a quasi-official status with the Multi-Fibre Arrangement (MFA) as the most extensive example. In the final UR negotiations many contracting parties were obliged to improve their trade situation in order to pave the way for the integration of this sector into the GATT system after the UR negotiations. Developing countries who are the main exporters of textiles and fibre products intended to dismantle the MFA (which expired in 1991), and re-integrate it into the GATT system. <sup>65</sup>

In addition to developing countries, major industrial countries, particularly the US, Italy and Portugal, have vital interests in the textile sector. It is a politically sensitive area since it employs thousands of workers, often living in depressed regions. <sup>66</sup>

Despite its vital role in trade and the prosperity of many developing countries, sometimes heavily dependent on its exports earnings, the political pressure of industrial countries forced the textile and clothing sector to remain outside the framework of the GATT negotiations. Even if industrial countries liberalised agriculture and textiles in the UR, in return they expected the developing countries to open their markets to the products which in turn benefit the providers of services and capital, and to furnish better protection for intellectual property rights. <sup>67</sup>

On the area of new issues, as a distinguished expert in developing countries' affairs, Mr. Bhagwati<sup>68</sup> has pointed out, a grand compromise expects the developing countries to swallow serious misgivings about services, TRIMs and TRIPs, misgivings that have not entirely to do with trade. The third world has good reasons to regard these issues as outside the scope of traditional give-and-take on trade policy. On top of all

this, delivering the extensive compromise would be greatly complicated, precisely because it cut across the negotiating structure of the talks.<sup>69</sup>

***(2) Arrangements on Tropical Products***

Trade in tropical products accounts for 5% of world trade. For least developed countries this means a large share of their total export earnings,<sup>70</sup> since most of them are economically dependent on the foreign sale earnings of a single commodity.<sup>71</sup>

After many discussions on how to tackle this sector, one of the final proposals was the request for and offer of a procedure which seemed to be the most appropriate for such products.

In the negotiating group on tropical products two separate export-interest lists were submitted. They classified some 300 products of interest to thirteen developing countries in Africa, the Caribbean, Pacific and Central America. On their side the industrialized countries also tried to ensure that such classification did not influence domestic producers in importing countries of similar products. Consequently, a number of important products were excluded from the list. This happened partly because of the specific nature of tropical products, there was no classification for them throughout the years.<sup>72</sup> Since many of the agricultural and fishery products that are subject of industrial countries' trading interests generate still some ambiguity; it is no surprise if tropical products are not yet properly categorised.

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## IV. THE MAIN ISSUES IN AGRICULTURE NEGOTIATIONS

Agriculture has been called the '*linchpin of the Round*'. Agreement by the industrial countries to negotiate on agriculture was one of the predominant factors in bringing the developing countries to the negotiating table and determine their blessing for several elements in the industrial package.<sup>73</sup>

In relation to internal support, disagreements remain on how to define the instrument for reduction commitments affecting '*domestic support*'. On market access, there was some progress on the method to convert non-tariff measures to tariffs, a policy that was favoured by the US. However, not all the participants agreed to such alteration. In the area of export subsidies, there was some progress in identifying policies that were included in the final arrangement to the round.

### ***A- THE AGRICULTURAL TRADE IN MID-TERM REVIEW.***

The Mid-Term Review was held in Montreal in December 1988. Many important issues such as agricultural trade problems were discussed, and some agreements were reached (except, agriculture, intellectual property, textiles and safeguards measures). The preparation of a work programme for the final negotiations was one of the main issues on the agenda. In addition, three major negotiating areas in agricultural trade received particular attention: domestic support, market access, and export competition.

From the beginning, two different concepts marked the preparation of the mid-term review:

1)- The US and the Cairns Group favoured a substantial mid-term negotiation beginning with first conclusions and agreements, the so called '*early harvest*' particularly in the field of agricultural trade. 2)- In order to bridge the wide gap between US and EC

views in agricultural trade, the Cairns Group offered a sensible compromise, consisting of both short-term and long-term policy reforms. In the short run, it proposed that the multilateral trade negotiation should call for a standstill<sup>74</sup> approach on subsidy programmes and then a subsequent schedule to scale back both production and export subsidies over a fixed period of time. The long term approach required that agreement on any form of trade distorting practices should be covered by the liberalization commitment and elaborated to determine how the level of subsidies should be calculated.<sup>75</sup> The Cairns approach was incorporated into the limited policy reforms established in both the US and the EC in recent years.<sup>76</sup>

The final package of the mid-term review was generally interpreted as a balanced and acceptable approach on the following basis:<sup>77</sup>

a)- both industrial and developing countries offered a first set of concessions in the field of tropical products. The latter group expected further concessions to be made at the end of the negotiations, b)- in the field of tariff and non-tariff measures they agreed on further significant tariff reductions during the Round and some specific criteria were to be established for the elimination of non-tariff measures, c)- in the sensitive area of agricultural trade, significant progress was achieved on a short term freeze in the overall support level and a first reduction '*down payment*' of the relevant levels, counting from the beginning of the Round was agreed.

The TNC finally accepted the formula that the long-term objective of the agricultural negotiations was to provide for substantial progressive reduction in support and to sustain protection over an agreed period of time.<sup>78</sup>

It is possible to summarise the mid-term agreement as follows:

a)- not to exceed current levels of support and protection: b)- to guarantee market access in 1989 and 1990, equal to the average levels applying in 1987 and 1988;

c)- to freeze support to producers, expressed in terms of national currencies (the ECU for the EC), at the levels applicable on the date of the agreement.

The EC was asked to provide specific measures to assist the developing countries. All these attempts highlighted the intention of many participants to reach a consensus in the final phase of negotiations. However it was as the result of unsuccessful attempts to reach consensus after the mid-term review, particularly with conflicting interests in agricultural trade, that the UR negotiations were prolonged.<sup>79</sup>

### ***B- THE MAIN REASONS FOR LONG DELAYS IN THE FINAL STAGES OF UR.***

Referring to the long delays in the UR negotiations, Carla Hills, the top US trade official at the time stated: '*The UR is adrift*' ...to some extent she was right, but who was responsible? The most serious deadlock in the Round was over the conflict in agricultural policies of the US and the EC. The core of the issue was the US and some other participants demanded that the EC eliminate its export subsidies and import controls on agricultural products. The EC, however, was not effectively able to do this without a drastic reform of its internal agricultural policy involving extremely controversial and political issues common to almost all EC member countries. Until the agricultural reform was settled internally, the EC would not be able to agree with the rest of the world on its agricultural export policy.

The US authorities decided to continue until 1993,<sup>80</sup> but their negotiating position created some political controversy that even had some effects on the US political campaigns (Presidential election). In addition some delays had specific linkage to the consideration and approval of the North American Free-Trade Agreement (NAFTA) by the US Congress. This is why the final conclusion came after such Congressional approval.

In relation to the overall results of the Round, three scenarios with legal implications were predicted by commentators.<sup>81</sup>

- i)- First was the idealistic view that the EC might come to an internal agreement on agricultural policy,<sup>82</sup> but, there were few signs that the EC could come to such a settlement. The main reasons to support this view were numerous internal pressures and protests over the cuts on agricultural support in major EC countries during the crucial phase of the negotiations, particularly the later stages.
- ii)- The second scenario centred on the US and other participants lowering their expectations for the quality of a UR consensus.
- iii)- In the third scenario a substantial collapse of the Round was predicted.<sup>83</sup>

The conclusion of the Round and the final deal in agriculture ended those ambiguities but there is no assurance that it will not generate tensions in future over the agricultural problems of the developing countries in the GATT system. The deal does not significantly rectify world agricultural trade distortions, and may introduce new areas of ambiguity into the GATT, requiring more dispute settlement practices. For example, putting more restrictions on domestic subsidy levels would be added to the ongoing issues over market access and export subsidies, as areas of existing controversy.

### ***(1) Difficulties on dispute settlement procedures***

Bringing more operationally effective rules and disciplines for agriculture was one of the prime objectives of the Round. It is why most of the proposals on agriculture called for stronger and enforceable international rules governing trade in agricultural products. The dispute settlement mechanism is thereby one of the central issues in adopting effective rules.<sup>84</sup>

The mid-term review of the Round added significant interim amendments to the dispute settlement process on May 1st, 1989 and these were applied until the conclusion of the Round as a trial period. These amendments corrected many of the procedural

weaknesses in the dispute settlement process, eliminating opportunities to delay the establishment of a panel or to delay the proceedings after a panel is established.

In addition to other progress in this area; relating to sub-articles 35 and 36 of the final UR Agreement on Agriculture (FAA) regarding sanitary and phytosanitary regulations, it was agreed that "*the Contracting Parties shall apply to consultations and the settlement of disputes under this decision*" Sub-article 36 requests the panels to seek technical advice from the experts chosen or independent bodies when their decisions involve scientific or technical issues. It is possible to conclude that such practices could assist developing countries normally lacking the assistance or consultation of experts in this area, otherwise any wrong or misleading information regarding their export products may easily have the same effect as a sanitary and phytosanitary obstacle.

A sound dispute settlement mechanism would add to a more transparent trading environment. It would help every participant to get a fair share, especially weaker parties with no other retaliatory instrument to enforce their terms. In such a situation rule oriented policies would flourish, otherwise as Carla Hills indicated:

Without internationally agreed rules in the enormous areas of commerce where now there are no rules, trade disputes could grow into costly trade wars,....<sup>85</sup>

When rules are weak or non-existent, trade disputes may turn into trade wars; foreign sales are frustrated and inefficient industries maintained at taxpayers' expense through subsidies. It is why every effort should be made to build a proper and rule oriented dispute settlement system to safeguard the application of GATT rules and decisions.

Despite these improvements, it is still possible to hamper the dispute settlement process by blocking the adoption of panel reports by the losing party, in the absence of effective procedures to ensure that there is prompt compliance with panel findings. The

ability of the losing party to block the winning party's request to retaliate in the absence of compliance is another weakness. The US also has sought agreement on restricted time limits for the dispute settlement process consistent with the time frame permitted under Section 301 of the US Trade Act of 1974, as amended.<sup>86</sup>

### ***(3) The Blair House negotiations***

In November 1992, the EC Commission forwarded to the Council a detailed report on the outcome of the negotiations at that stage and, in particular, the controversial negotiations with US at Blair House. The report contained important and crucial areas of negotiations on:

- access to the EC market -internal support -rebalancing strategy
- commitments on exports -peace clause

Since the major task of the negotiations were focused on the EC disputes with US over agricultural support in EC, the main discussion in the Council was over the compatibility of the Blair House Agreement with the CAP reforms. It was realised that the exclusion of the compulsory payments to farmers under CAP was a major and essential improvement of the Draft Final Act. It was indicated further that this is part of the global reduction in support, that led to further flexibility of the EC in the final stage of negotiations. Other issues such as stocks and duration of the peace clause with the US was further raised and led to the final Brussels negotiations in December 1993.

### ***(4) The need for an agricultural trade reform in the UR.***

For many years, the EC and the US have been massively subsidizing their agricultural exports, particularly in the cereal sector. At the same time they raised barriers to food imports. In this situation they have been hitting consumers twice, through, a)- high prices for agricultural commodities, by protecting national products; b)- high taxes due to subsidies. Some other countries banned any import of selected agricultural commodities.



Who are the losers in this game? Certainly those competitive farming nations (mainly developing countries) squeezed out of the potential international markets by a combination of trade restrictions and different forms of subsidies and barriers.

The FAA was designed to reform trade in agriculture, to bring sense to this politically and economically important sector. One of the main aims of the negotiating committee was to inject some fair competition in the agricultural trade sector and discourage governmental support that generally brings trade distortions.<sup>87</sup> How would this be carried out to create a balance between the conflicting interests? Three measures considered by the participants may be cited here:

First, opening of national markets to international competition through the replacement of non-tariff measures with progressively reduced normal customs duties. In this situation consumers would benefit from lower food prices.

Secondly, criteria should be set for a progressive reduction in government aids that generally lead to over-production and surpluses. Such surpluses should either be disposed of through export subsidies to international markets, or destroyed. Governments could continue to support farmers' incomes, but in a manner which would not stimulate over-production.

The third measure imposes new disciplines on export competition. Progressive reductions in the amounts governments pay for these subsidies and the volume of subsidized exports would bring fairness to international markets and provide opportunities for competitive agricultural exporters.

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## V. THE FINAL PACKAGE OF MEASURES IN AGRICULTURAL TRADE

The 550 page document embodying the final text of the UR Agreement spells out the results of the negotiations since the launch of the Round by the Punta del Este Ministerial Declaration. The Final Act covers all negotiating areas cited in the Declaration with two main exceptions. The first is the result of the '*market access negotiations*' which left it to individual countries to make binding commitments to reduce or eliminate specific tariffs and non-tariff barriers to merchandise trade.<sup>88</sup> The second exception is the '*initial commitments*' on liberalization of trade in services. These commitments on liberalization are also subject to individual national schedules records.

The conclusion of the Round negotiations opened the way to substantial increase in trade flows among the 117 participating countries in all different sectors. It opens up worldwide markets by an average tariff cut of around 40% that should lead to a boost in the world economy by hundreds of billions of dollars by the end of century.

### A- THE SCOPE OF 'UR TEXT ON AGRICULTURE' <sup>89</sup>

The Agriculture Agreement is largely based on the proposed Draft Final Act tabled by the GATT former Director General, Arthur Dunkel, in December 1991.<sup>90</sup> The agricultural package of measures is conceived as a first step in a long-term reform process designed to establish a fair and market-oriented agricultural trading system, as agreed by Ministers at the UR Mid-Term Review.

The scope of coverage for agricultural negotiations concerns all raw and processed products, with special priority given to sectors with structural surplus and sectors where serious disruptions may be expected. The final text on agriculture has four elements:

- a)- a basic '*Final Agreement on Agriculture*' (FAA), comprises thirteen parts, which contain 21 Articles. The Agreement also contains 5 Annexes that became an integral part of the Agreement.
- b)- an agreement on the modalities for establishing specific binding commitments under

the reform programme,

c)- a decision on the application of sanitary and phytosanitary measures;

d)-a declaration on measures to assist the net food-importing developing countries who will lose by the reform programme. The last three sections are supplementary to the first final Agricultural Agreement.

## ***B- THE MAIN ISSUES UNDER CONSIDERATION***

### ***(1) Market Access***

Market access is one of the most sensitive political issues in agricultural trade negotiations and an area of conflict especially amongst industrial countries. The prominent problems in this area are the EC variable levy, the US section 22 waiver (used to protect dairy products, sugar, cotton, and peanuts), the Japanese prohibition against rice imports and Canada's import quotas on dairy, poultry, and egg products; all voluntary export restraints, including those periodically negotiated on beef exported to the US and currently on manioc to the EC; and a host of other tariff and non-tariff barriers around the world.

It is possible to distinguish two common features in these policies. First, they isolate producers in those countries both from competition and from changes in the world markets. Secondly, they help maintain internal prices above world prices. Article 4 of the final UR text on agriculture sets out two criteria in the area of market access for participants as follows:

1. Market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.
2. Participants undertake not to resort to, or revert to, any measures which have been converted into ordinary customs duties pursuant to concessions under this Agreement.

These criteria are very general and they do not cover all details for implementation of the market access measures. However, the '*Agreement on Modalities for the Establishment of Specific Binding Commitments under the Reform Programme*', sets specific binding commitments under the agricultural reform programme. The

commitments apply to measures maintained by participants relating to products that are listed in Annex 1, that relate to agricultural products.

The modalities for market access in agricultural products can be classified as:

a)- Those agricultural products that are currently subject to ordinary custom duties only.

In this situation, the reduction commitment shall be implemented on the bound duty level or, in the case of unbound duties, the base date of application is considered as 1st September 1986.

b)- The second category are those agricultural products that are currently subject to certain border measures other than ordinary customs duties. The reduction commitment specified in paragraph 5 (the third category here) shall be implemented on customs duties resulting from the conversion of such '*tariffication*' measures.

c)- The third category covers ordinary custom duties, including those resulting from tariffication, which shall be reduced, starting from year 1993 to the year 1999, on a simple average basis by 36% with a minimum rate of reduction of 15% per annum for each tariff line. All agricultural customs duties would be bound in the GATT. It is also agreed that in case of an import surge or shipments at prices below a certain reference level, importing countries could impose additional duties under a special safeguard clause. The current access opportunities would be maintained. Where there are currently no significant imports, minimum access opportunities of 3% of domestic consumption would be established, expanding to 5% by 1999.<sup>91</sup>

In a nutshell it is possible to summarise the FAA measures in this area as establishing that all import restrictions are to be converted to tariffs and reduced by 36% over six years. The base period is considered as 1986-88. Minimum access requirement of 3% based on domestic consumption (1986-88), rising to 5% by the end of the agreement. It was also agreed that the current market access to opportunities to be

mentioned.

The Agreement on modalities also indicates that the reductions in ordinary customs duties and exceptions for market access opportunities shall be implemented in equal instalments. It will help the contracting parties to establish their specific binding commitments under the UR reform programme, and avoid any ambiguity and confusion regarding the implementation of access opportunities.

## **(2) Domestic Support**

Domestic support measures were discussed in the Montreal mid-term agreement which called for a '*substantial progressive reduction*' in protection and support. There was a question as to what '*substantial reduction*' really means, since the EC and the US had different interpretations and expectations of it. The EC assumed that a substantial progressive reduction meant an end to the US and Cairns Group demands for complete elimination of all trade distorting domestic policies. In return, the US delegates insisted that substantial reductions still meant reducing to zero.<sup>92</sup>

The next question was how the reductions were to be implemented, monitored and enforced, and to what degree internal supports should be reduced and which specific policies and commodities should be subject to reductions.

Some believed that a search for a complete prohibition against trade-distorting domestic subsidies in agriculture was not realistic. Such a prohibition would liberalise agricultural trade to a point well beyond other sectors, and that seemed unlikely.

If the idea of adjustment to domestic policies were not implemented, the question remained as to how the cuts in domestic support policies were to be made and how deep they might be. This disregards the vital needs of rural communities in the developing world who are heavily dependent on agriculture and rely on internal support measures. These are two parallel elements in a scale.

**a- The final agreement on Domestic Support**

Article six of the final UR Agreement on Agriculture is devoted to internal or domestic support. Under these commitments;

1)- The participants bound themselves to follow the schedule of commitments that apply to all domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in Annex 2 to the final Agreement.<sup>93</sup> The commitments are based on an Aggregate Measurement of Support (AMS) and of equivalent commitments.

2)- The second Paragraph refers to two types of exception to domestic support reduction commitments policies for developing countries, otherwise such measures are to be applicable to them; namely: investment subsidies, generally available to agriculture in developing countries and agricultural input subsidies, generally available to low-income or resource-poor producers in developing countries. The main reason for applying them in developing country is to encourage diversification and sometimes even develop away from growing illicit narcotic crops.

Paragraph 4 relates to the calculation of the Aggregate Measurement of Support, and states that "*For developing country members, the de minimis percentage under this paragraph shall be 10 percent.*"<sup>94</sup>

It was agreed that investment subsidies are to be available only for a small proportion of low income and poor farmers in the developing world. In comparison with different varieties of internal support policies in industrial countries (such as income support, set aside land schemes etc.) such investment subsidies may not be considered as an effective measure for supporting developing countries farmers. In addition, investment is a common way of generating support in any system and since it is part of states' development policies, it could not be treated as a strong supportive measure

for developing countries. The ability of developing countries to provide such investment subsidies in large scale is a question.{k}

Article 7 of the final UR text in agriculture lays out some general disciplines on domestic support policies.

In summary the agreed reduction on internal support is 20% over a six year period, based on the total Aggregate Measure of Support, and the base period is considered as 1986-88. What is significant in the case of least-developed countries under the final Agreement is that they were exempted from export subsidies reduction commitments. The reduction commitments for other developing countries are less severe, specifically not less than two-thirds of the reductions mentioned above. The implementation period could be extended by them to a maximum of 10 years. In recognizing their need to encourage agricultural and rural development, developing countries are exempted from reduction commitments with respect to generally available input subsidies and investment aids. In analysing domestic support measures in the Round, it is possible to divide them into two categories of measures namely '*Amber policies*' or trade distorting policies that are considered harmful and '*Green policies*' meaning those policies which have a minimal impact on overall trade of participants. The draft text contains a list of export subsidy measures that are subject to reduction commitments. A '*green list*' has been established of subsidies that will not be subject to retaliatory action by other parties, provided they are applied in conformity with the new rules on subsidies. On the other hand the reductions subject to '*amber policies*' should be carried out on the base of a time schedule.<sup>95</sup>

Table NO. 13

<p><b>DOMESTIC SUPPORT POLICIES IN URUGUAY ROUND</b></p>
<p>AMBER BOX (amber policies or trade distorting policies)</p> <p><i>[subject to reduction commitments]</i></p> <p>20% global reduction in expenditure on domestic support for agriculture compared to 1986-88 levels by the end of 6 years implementation period.</p> <hr/> <hr/> <p>Industrial countries</p> <p>Amber support would be a subject to a reduction on quantity of subsidised export products by 20% between 1993-99.<sup>96</sup></p> <hr/> <hr/> <p>Developing countries= 13.3 % reduction of total AMS.</p> <hr/> <hr/> <p>Least- developed countries = no reduction</p>
<p><b>GREEN BOX (green policies)</b></p> <p>Policies with a minimal impact on trade</p> <p>General government services such as: support for research and development subsidies, disease control, infrastructure, environment protection and food security; in addition to direct payments to producers such as '<i>decoupled</i>' forms of income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes.</p>

Source: The table is my own initiative, using figures from sources specified in the table.

As this table No.13 indicates there are different disciplines for less-developed and developing countries in comparison to industrial countries. But developing countries reduction commitments vary according to their level of development and the degree of



competition within the specific sector concerned. In addition the subsidies code allows for '*graduation*' for developing countries from least developed to developing stage, according to a per-capita income criterion.<sup>97</sup>

One may argue that as the majority of developing and less developed countries do not have many of these practical support measures for their agricultural products they may eventually affect only a number of small number of the more advanced developing countries.

### **(3) *Export Subsidies and Competition***

As referred to in Chapter Two, the special exemption of agriculture from the general prohibition against export subsidies in Article XVI of the GATT has been a source of disputes in international agricultural trade. The exemption was a major source of distrust and contention for the GATT dispute settlement process, and a sticking point of US-EC negotiations in the past few rounds of trade negotiations. It has provoked political confrontation.

The UR response was to phase out and then to prohibit all export subsidies for either raw or processed agricultural products. There was a call for additional refinement of Article XVI:3. involving a definition of what was an '*equitable share*' of the world market. It might have involved some market-sharing formula of one type or another.

#### **a- The final agreement on export competition and subsidy commitments.**

The final UR text in agriculture regarding export competition is divided into two different sections: Article 8 relates to export competition commitments and recommends that 'each participant undertakes not to provide export subsidies otherwise than in conformity with this agreement and with its commitments as specified in its schedule of export competition commitments'. Article 9 is devoted to export subsidy reduction commitments. It consists of four sub-Articles. The first sub-Article counts six kinds of

export subsidies that are subject to reduction commitments under the Agreement:

- (a) The provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a co-operative or other association of such producers, or to a marketing board, contingent on export performance.
- (b) The sale or disposal for export by governments or other agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market.
- (c) Payments on the export of an agricultural product that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived.
- (d) The provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight.
- (e) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (f) Subsidies on agricultural products contingent on their incorporation in exported products.

In brief it was agreed that the volume of subsidies exports is to be reduced by 21% over six years (base period 1986-90). It was also decided that the budgetary expenditure on export subsidies would simultaneously be reduced by 36% over six years.

These provisions illustrate the very elaborate and hidden ways that industrial countries support export promotion programmes. It is evident how such methods may be applied, for example sub Article (b) forbids the sale or disposal of non-commercial stocks of agricultural product....in the domestic market. This happened in many developing countries, where even if under the food-aid banner, stocks could be harmful to domestic producers.

There is concern about sub-Article (e), regarding possible discrimination by governments on internal transport and freight charges for export shipments of exported

goods against domestic shipment. Considering the bulky nature of agricultural products and the possible need for cool containers, this can amount to a substantial cost for exporters. Sub-Article (e) discourages or seeks a possible reduction<sup>98</sup> of such assistance by governments since it has the same effect as an export subsidy.

Sub-Article 4 of Article 9 indicates that, during the implementation period, developing countries shall not be required to undertake commitments in respect of export subsidies listed in sub-paragraphs (d) and (e) above on condition that the export subsidies should not be applied in a manner which would circumvent reduction commitments.

With few exceptions, the majority of developing countries are generally not in a position to assist their agricultural producers on issues subject to the above sub-paragraphs (d) and (e). Therefore these exemptions from reduction commitments is a realisation of developing countries' poor export position.

#### **(4) Health and Sanitary Standards**

One of the main goals of the UR was to reduce or eliminate trade distortions in agricultural trade by challenging national agricultural policies that are usually the major cause of distortion in production, trade and consumption.

The negotiations involved a major effort to reduce the adverse trade effects of national health and sanitary standards for food and agricultural products. This arises from a belief that these standards have been, and will increasingly become, a major non-tariff barrier that threatens the free movement of agricultural products .

Article 14 of the FAA refers to the intention of participants to give effect to the agreement on '*Sanitary and Phytosanitary Measures*'. At the same time the main objective of the negotiating group in this area was to harmonize the existing national standards so as to reduce their negative impact on trade. Perhaps one of the main

instruments with which to achieve such an objective is to develop an effective dispute settlement mechanism within the GATT regarding health and sanitary regulations. The main concerns in this area are devoted to scientific evidence and judgment in the dispute settlement procedure.<sup>99</sup>

One of the most controversial cases in recent years concerning public health was the dispute between the US and the EC over the use of hormones in beef production which has withstood resolution for many years. Recent cases in this area are the so-called BSE or mad-cow disease in cattle, salmonella in poultry products in the EC, particularly the UK. It should be realised that at the present time, consumers in rich countries have become increasingly sensitive to real or perceived health hazards, and these issues have taken on a new complex and political dimension in international trade deals.

In addition to Article 14 of the FAA, part B of the main 'Uruguay Round Text on Agriculture' or the '*Agreement on Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme*' is of particular importance. The Agreement comprises 46 paragraphs (or sub-Articles) setting down the grounds for the elaboration of rules for the application of the provisions of the GATT which relate to the use of sanitary and phytosanitary measures, in particular the provisions relating to Article XX(b). It should be realized that it is one of the most elaborate parts of the agreement, covering different angles of the problem.

This part of the Agreement marks one of the most important decisions in the UR and considers the protection against risks to human health or life, or animal<sup>100</sup> and plant health or life. The main desire of the negotiating committee was to establish a multilateral framework of rules and disciplines to guide the adoption, development and the enforcement of sanitary and phytosanitary measures in order to minimize their negative

effects on trade.

Paragraph 7 seeks to ensure that the use of sanitary measures by contracting parties does not arbitrarily or unjustifiably discriminate between contracting parties where identical or similar conditions prevail. It also discourages the application of these measures in a manner that would constitute a disguised restriction on internal trade.

It is possible to conclude that the drafters realised the importance and sensitivity of this area and the possible abuse of its rules to create an unnecessary discrimination or obstacle to free trade .

Paragraph 22 may assist developing countries by providing:

In cases where relevant scientific evidence is insufficient, a contracting party may provisionally adopt sanitary or phytosanitary measures on the base of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other contracting parties.<sup>101</sup>

This is an indication that scientific information from international bodies and those applied by other contracting parties could be a useful base for a developing countries' approach. In order to harmonize the sanitary and phytosanitary measures as widely as possible, members are encouraged to base their measures on international standards, guidelines and recommendations where they exist.

### ***(5) Other important measures in the Final Agreement***

#### **a- Consideration of developing countries problems**

Several paragraphs in the FAA refer to the problems of developing countries. These references addressed only a small proportion of developing countries' trade problems. Since many of them are not able to meet requirements in this area and to combat unnecessary obstacle, the FAA devised some safeguards in favour of developing

countries. For example paragraph 20 urges the contracting parties to:

avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.<sup>102</sup>

There is another step in this area that seeks the co-operation of the contracting parties in the '*Committee on Sanitary and Phytosanitary Measures*', to develop guidelines to further the practical implementation of this provision.<sup>103</sup>

Paragraphs 24, 25 and 26 set out regulations regarding the '*Adaptation to regional conditions, including pest-or disease-free areas and areas of low pest or disease prevalence*'.

Paragraph 29 is based on the participants' desires to facilitate the provisions of technical assistance to other contracting parties, especially developing countries, either bilaterally or through other international organizations. Such assistance may cover processing technologies, research and infrastructure, including the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, for the purpose of technical expertise, training and equipment to allow such countries to comply with sanitary or phytosanitary protection in their export markets.

A possible implementation of these provisions will open new windows of opportunity for developing countries to cope with their problems, for example assistance in the area of processing technologies, including research and infrastructure, is one of the key areas in which developing countries are in vital need. In addition, the establishment of national regulatory bodies presenting advice, credits, training and grants is essential. However, it remains to be seen whether these regulations will be implemented, and the extent of their application. Since the developing countries lack technical and practical instruments to assess or examine their various needs any positive step even the possibility of proper consultations, will help them to solve their problems.

**b- The indication of special and differential treatment for developing countries**

Article 15, Paragraphs 31, 32, 33, and 34 emphasise the need for special and differential treatment for developing and least-developed countries. Paragraph 32 does not prescribe exemption but indicates '*longer time frames*' for these countries to comply with the newly erected obstacles on sanitary or phytosanitary measures by industrial countries. It would have been better if these periods were defined in a more concise manner. Otherwise, some may interpret the comparably shorter implementation period as the intention of the drafters. As indicated in Chapter One, any small change in a production line may take a long period of time,<sup>104</sup> especially in developing countries.

Paragraph 46 is a response to the lack of a time-frame in paragraph 32, since it exempts the least developed countries from applying these rules for a period of 2 years. It also allows other developing countries to delay the application of this decision, other than paragraphs 23 and 27 of the same agreement:

for 2 years following the date of entry into force of this decision with respect to their existing sanitary or phytosanitary measures affecting importation or imported products where such application is prevented by lack of technical expertise, technical infrastructure or resources.

Sanitary and phytosanitary measures, and their possible abuse, act as a strong obstacle to the export promotion programmes of developing countries. It is vital to consider their position and chose the available resources to combat such difficulties. A simple example in this areas is in pharmaceutical goods, pesticide and fertiliser products. The developing countries face a dilemma here. On the one hand, there is increasing demand for the use of certain substances whose uses have been banned in industrial countries for many years because of health hazards. On the other hand, the products of developing countries sometimes face regulations which ban the importation of horticultural or agricultural products in which certain categories of pesticides have been

used in their production chain, pesticides which are imported from industrial countries, or received free under development aid. This is an unprecedented obstacle for developing countries agricultural products. What these countries need for the moment is to be vigilant and to avoid the repetition of the negative results of unlimited use of pesticides and generic hormones that was practised in the past, and had some negative results in industrial countries.

#### **(6) *Further elaboration of the Peace Clause***

The Clause states that agricultural policy measures, provided that they do not directly contravene the provisions of the UR final agreement, are not subject to challenge through GATT panels or any other dispute settlement procedure. In the final text there is precise reference to those types of measures that are exempted from such challenges. The Peace Clause, originally presented in the Blair House Agreement, has been extended from 6 to 9 years.<sup>105</sup> The FAA brings an essential innovation: the CAP is 'safe' under the legal rules of GATT because of the adaptation of the '*peace clause*' which takes a legal form since it is included in the Final UR Act. It is an indication that for a period the CAP will be protected against a range of challenges within the GATT, giving the CAP the ability to develop in a more market-oriented manner, free from the uncertainties of repeated challenge. In other words the CAP is now compatible with GATT and recognised as such by the adoption of the '*peace clause*'. It gives a kind of legitimacy to the CAP measures for the first time .

In relation to the US situation, the EC may claim a victory since it could extend the application of the Peace Clause for three years beyond the six years initial duration set out in the Round until the year 2003.

#### **(7) *New initiatives on the dispute settlement system***

In addition to the Montreal mid-term review provisions on strengthening the dispute settlement procedure, it was always understood that a far more comprehensive



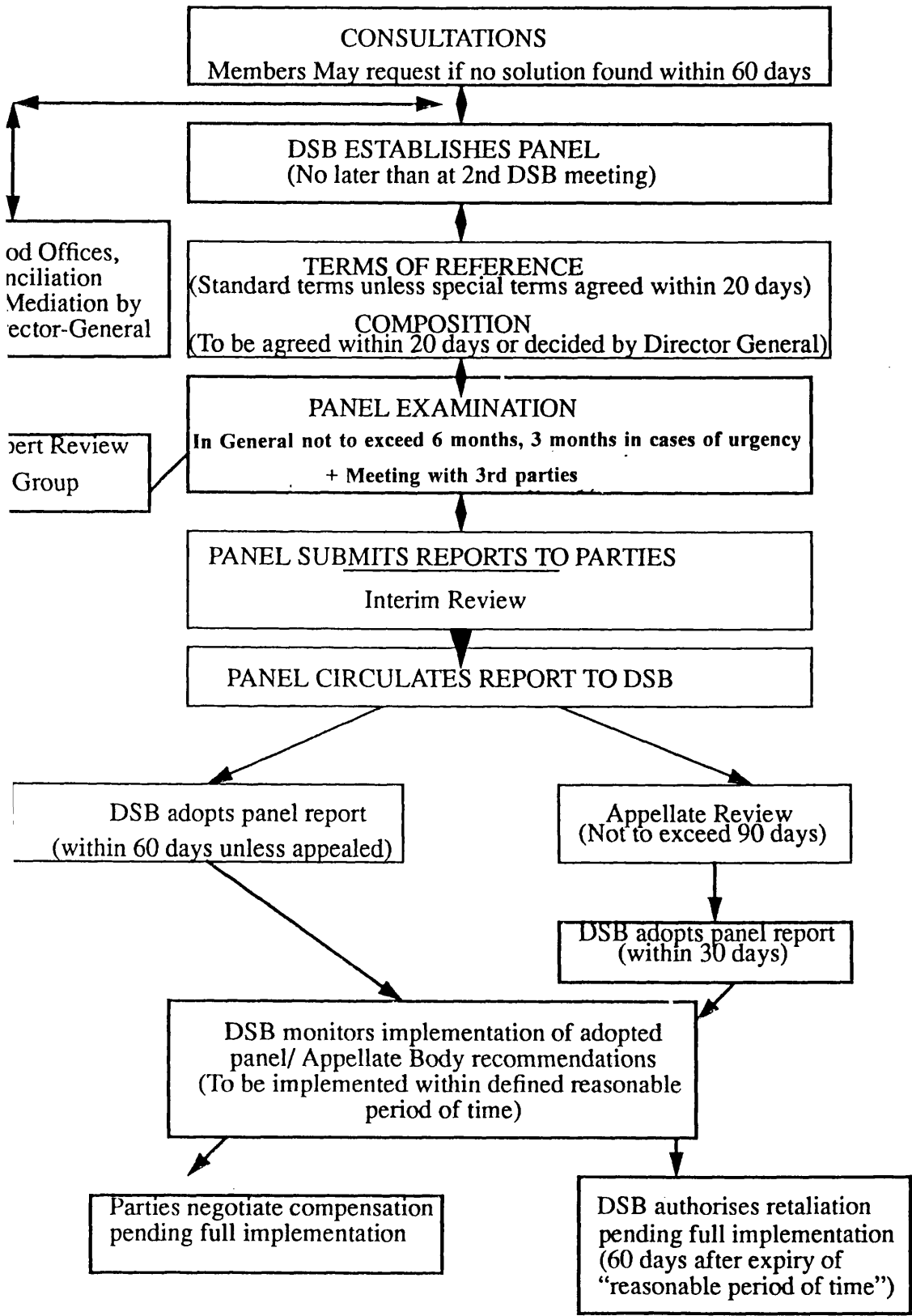
reform of the system would be evolved as part of the final package. The text which appears in the Draft Final Act extended the scope of the dispute settlement mechanism to all of the agreements covered by the Agreement on the Multilateral Trade Organization. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council and the Councils and Committees of the agreements.<sup>106</sup>

There are a number of changes in the panel procedures including the establishment of an Appellate Body with seven members, three of whom serve on any one case.<sup>107</sup> It was envisaged that a panel would normally complete its work within six month or, in cases of urgency, within three months. Panel reports could be considered by the DSB for adoption 20 days after they had been issued to the contracting parties. Within 60 days of their issuance they should be adopted, unless the DSB decides by a consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

What is important to least-developing countries is setting out special procedures for using arbitration, and possible resolution of disputes, that do not involve a violation of GATT obligations but where, nevertheless, a contracting party believes benefits are being nullified or impaired.<sup>108</sup> The new changes and initiatives in dispute settlement system are laid down in table No. 14 in the next page.

Table NO. 14

WTO Dispute Settlement Flow Chart



Source: Reproduced from: GATT FOCUS, Newsletter NO. 103, 'The WTO dispute settlement mechanism' p. 13.

**C- SOME IMPORTANT DECISIONS ON THE GATT ARTICLES**

One of the striking features in the FAA is the clarification of many ambiguous terms to avoid mis-interpretation of the provisions by individual contracting parties. Part one of the Agreement is devoted to this purpose and defines certain terms such as; '*Aggregate Measurement of Support*', '*basic product*', '*Equivalent Measurement of Support*', '*export subsidies*', '*implementation period*' and '*market access concessions*'. In addition, unlike many previous agreements, the scope of coverage for agricultural products is identified in a full list.<sup>109</sup>

There were other suggestions for clarifying the Articles related to agricultural trade or issued related to developing countries. In Article XI:1(b), transparency in the recording of duties and charges that are not considered as tariffs has been achieved.

Certain Articles also were clarified by the adoption of a number of agreements in the final package of the UR, for example the Agreement on the '*Interpretation of Balance- of-Payments Provisions*'. It was agreed that the imposition of BOP restrictions is possible providing that they should be applied in the least trade -disruptive manner and should favour price-based measures, like import surcharges and import deposits, rather than quantitative restrictions.<sup>110</sup> Developing countries also have accepted limitations on the use of non-tariff barriers (NTBs). Thus, the new balance of payments agreement will reduce recourse to such measures.<sup>111</sup> More agreements were reached on Article III, (national treatment), Article XI (prohibition of quantitative restrictions) and Article VI (the application of anti-dumping measures). In respect of Article XVII on state trading enterprises, it was agreed that there should be increasing surveillance of the activities of such enterprises through stronger notification and review procedures. In addition to greater transparency in the operation of State-Trading enterprises<sup>112</sup>

Regarding Articles XXII and XXIII on the dispute settlement mechanism, the final results emerging from the negotiations is close to a quasi-automatic and quasi-

judicial system. Two fundamental innovations are planned:

- 1)- the modification of the decision-making rules of the GATT Council,
- 2)-the institution of an appeal body to re-examine the findings of panels which present problems of legal interpretation.

In addition, the new mechanism prevents the use of unilateral trade sanctions and submits all the important stages of a dispute to multilateral provisions.

Article XXIV: In view of the new global dimension to and the enlargement of regional arrangements it was established in the FAA that new criteria and procedures for the review of the situation should be given. Also the evaluation and effects of the customs unions or free -trade areas on third parties must come under consideration. It also further clarified the procedure to be followed for achieving any necessary compensatory adjustment in the event of contracting parties forming a customs union seeking to increase a bound tariff. The obligations of contracting parties in regard to measures taken by regional or local governments or authorities within their territories are also elaborated.

The purely economic analysis of free trade areas subject to Article XXIV, suggest that in principle formation of such areas might hurt rather than help the world economy. Trade diversion may outweigh trade creation even with external protectionism unchanged; and the increased market power that countries gain by consolidating themselves into trading blocs could lead to optimizing but non- cooperative governments which may raise tariffs thus increasing trade costs.

The possibly emergent trading blocs consist of more or less neighbouring countries, who would be each others' main trading partners even without special arrangements. As a result, the potential losses from trade diversion are limited and the potential gains from trade creation are large.<sup>113</sup> The GATT, and the relatively free

trading system built around it, are developments resulting from an ideology that encourages free trade. In addition by modification of Article XXVIII, less developed countries could obtain a new principal supplier right.

#### ***D- ESTABLISHING THE WORLD TRADE ORGANIZATION***

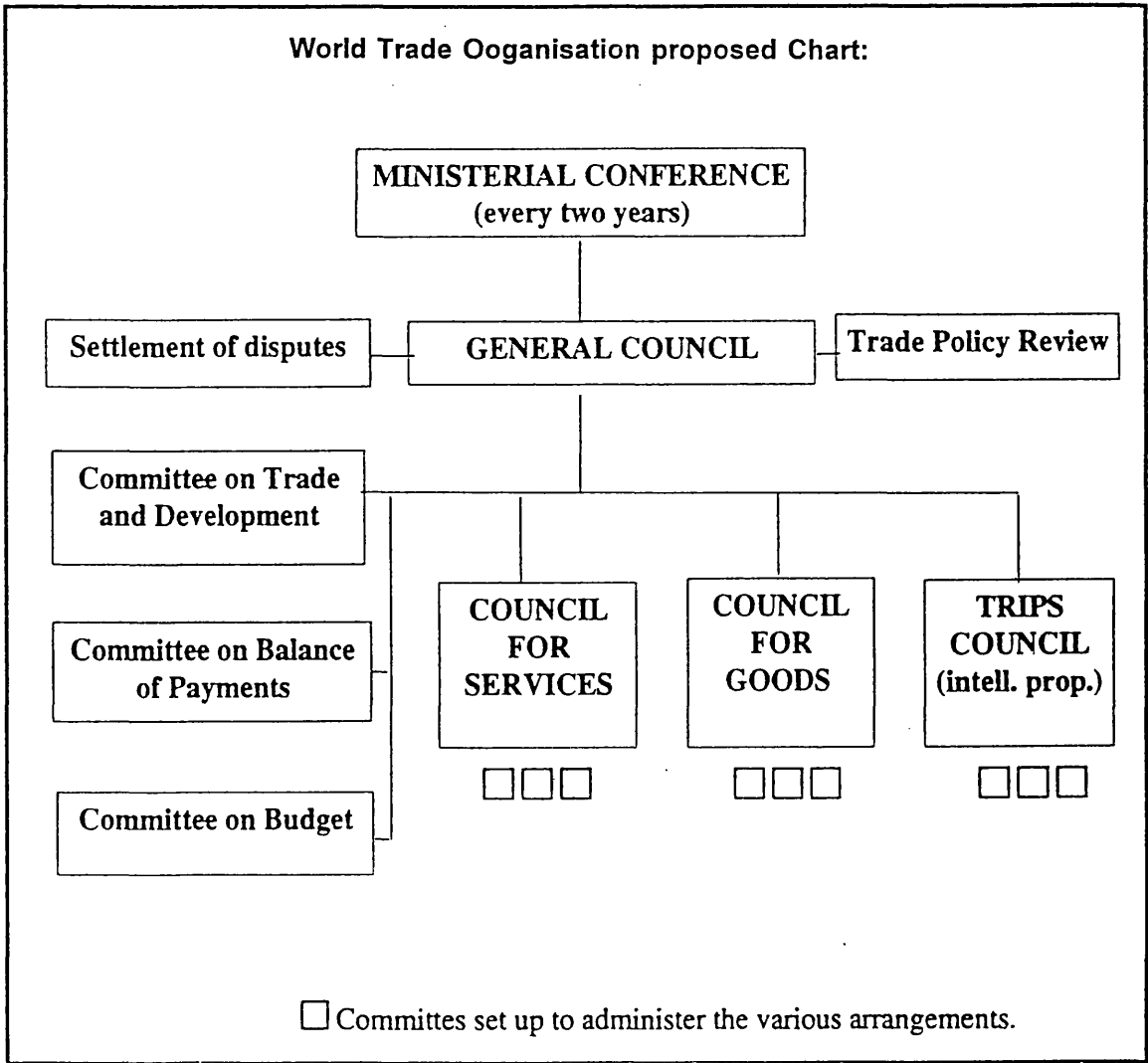
As the result of the final UR negotiations, the World Trade Organization (WTO) was established to create a single institutional framework encompassing the GATT, (as modified by the UR), all agreements and arrangements concluded under its auspices as well as the complete results of the UR. WTO will be headed by a Ministerial Conference meeting at least once every two years. The General Council is supposed to act as a Dispute Settlement Body and a Trade Policy Review Mechanism.

It will concern itself with the full range of trade issues covered by the WTO, and will also establish subsidiary bodies such as a Goods Council, Services Council and TRIPs Council. The WTO framework will ensure a '*single undertaking approach*' to the result of the UR. Membership in the WTO will entail accepting all the results of the Round without any exception.

What is important in relation to the WTO is the lessons from the failure of the proposed ITO that were referred to in the First Chapter of the thesis. It is possible to conclude that the new organisation will face the same objections to ITO. In those days the question remained as why did the proposed ITO fail but the GATT succeed ? Does the proposed WTO resolve those fundamental issues that led to the failure of the ITO? One of the reasons might be that the GATT concerns a narrower area in international trade activities, mainly tariffs and other related matters. Secondly, through its agreement nature, states who participate in the GATT do not require any special legislative approval within many contracting parties. They were able to participate in GATT as in

any other commercial agreement, just by executive authority, but participation in the ITO would have required legislative approval. Thirdly, commitments into the GATT Agreements were less binding than those envisaged in the ITO. A contracting party was able to withdraw from the GATT by giving sixty days' notice, compared to six months notice for withdrawal from the ITO.<sup>114</sup> Unless the WTO organisation provides a satisfactory answer to these fundamental problems its future is in doubt.<sup>115</sup> The below able shows a general framework of the proposed WTO, that will be completed by the new issues in the agenda.

Table No. 15



Source: GATT FOCUS, Newsletter NO. 103, 'WTO Briefing, What is the WTO ?' p. 11.

***E- THE CONCLUDING REMARKS TO THE CHAPTER***

In the GATT system there has always been an inherent tension between bilateral and multilateral negotiations. Being a body of multilateral trading rules and a forum for multilateral negotiations, the GATT system has been and continues to be a depository of each contracting state's schedule of trade concessions. Although these concessions are negotiated bilaterally, they are generally applied to all signatories under the MFN principle. Bilateral negotiations are considered to be an integral part of the GATT negotiating process.<sup>116</sup>

***a- The main deadlocks***

Despite the disagreements in different stages of the Round, there were good reasons for hope. No country liked to let the UR fail, which might then lead to an erosion of free trade and, potentially the fragmentation of the world into warring trading blocs. Some believe that many of the disagreements were tactical: since countries tended to hold on to their concessions until the last possible moment, hoping to strike better bargain. In practice many of the blockages were linked to progress in the talks on agricultural trade.<sup>117</sup>

There were many reasons for the lack of substantial progress in the negotiations and long delays in concluding the Rounds agenda. As indicated by Mr. Dunkel, one of the main reasons was that countries failed to provide new instructions to their negotiators, leaving them stuck in their old trenches.<sup>118</sup>

With regards to the US and its allies, the common view was that they clearly did not get the farm-trade deal they were looking for. Many efforts had been successfully blocked by the EC and others, and even many less developed countries were not happy with the negotiations and objected to the introduction of new issues. There had been a fundamental change in US trade policy, from a single, overriding commitment to the GATT, to a multitrack policy of unilateralism, bilateralism, and multilateralism.<sup>119</sup> They

finally came to consensus to avoid fragmentation of almost seven years of UR negotiations.

**b- Encouraging steps**

In contrast with earlier rounds, the UR was undoubtedly the most ambitious of its kind. It went beyond traditional issues like tariff or non-tariff measures and tried to solve important problems like agricultural trade, an issue that was substantially neglected in the past. The Round was also aimed at re-establishing GATT rules and disciplines in sectors like textiles and clothing that have a close relation with agricultural products, and the interests of developing countries. In practice, they were subjected to special treatment in the past. The negotiations also tried to protect the rules of fair competition in a multilateral environment and remove unjustified barriers to trade.

For better or for worse, the UR negotiations showed that the future success of the GATT or its WTO successor depends on the goodwill of the US, and above all on the EC's willingness to reform its '*absurd common agricultural policy*', and other major trading countries to make real adjustment in their policies.<sup>120</sup> The UR produced some 28 agreements with provisions to establish about 20 bodies to administer them, under the new WTO as the common institutional framework for the conduct of the trade relations among the members. The UR provided some signs of a true test of their willingness to do so. Possibly the future strength and endurance of the multilateral trading system lies in adjusting such a balance of interests between these major players, no matter if the majority of developing countries gain or lose.

The lengthy duration of negotiations and the long gaps for making final decisions created further confusion and dissatisfaction. Mr Dunkel was right in saying that '*the negotiators are playing hide-and-seek*'. When the possibility of a total failure was raised, some were persuaded that the UR was different from previous bargaining sessions, making brinkmanship unsurprising. Unlike in the Kennedy and Tokyo Rounds



in the 1960s and 1970s, this time all the protagonists, rich and poor alike, had vital interests on which they expected to gain from freer trade.

One of the main goals of the Round was steps towards the liberalization of world trade. It is clear that such a global liberalization increases exports, but the main beneficiaries would be countries who have flexible trading systems and are able to adapt quickly to new demands. This is not generally the case for developing countries.

The rich countries were anxious to liberalise trade in new areas, such as intellectual property, investment and services. The US, Canada, Australia and New Zealand also sought a deal in agricultural trade. On the other hand the EC was keen that financial services be included, an area that the US regarded with suspicion. So, in the end, such linkages provided a motive for contracting parties, especially the industrial countries, to come to a deal.<sup>121</sup>

### **c- General effects on developing countries agricultural trade**

Before the launch of the UR, the developing countries were not entirely convinced with the manner in which the previous TR negotiations had been conducted. They believed that their interests might not again be taken into consideration. They were right on this issue, since the lengthy duration of the UR negotiations not only produced no substantial gain for them, but also improved their fear in playing any such games in future. It raised their awareness of how, despite their optimistic hopes for more equitable treatment in comparison to industrial countries, they have gained very little.

More liberalisation of agricultural trade in the UR brings different results for developing countries depending on their different economic structures and the sources of export earnings. In case of higher world food prices, the heavier price will be paid by the net food importing countries. In order to reduce its effects, the GATT authorities

argue that unlike the '*oil price shocks*' of the 1970s, to avoid '*food price shocks*' the reform programmes will be phased in gradually over six years. In that case the price increases, to the extent that their effects will occur gradually, will give consumers and farmers in the importing countries time to adjust.

In the UR agricultural negotiations there was some tariff cut commitments by leading developing countries giving benefits to industrial countries markets. The industrial countries agreed that the key Asian developing countries had tariffs as high as 100%. They were persuaded to cut their tariffs between 10% and 30% in Malaysia and Thailand and between 25% to 45% in India. At the same time, Indonesia and the Philippines set their top rates at 40% and 50%, South Korea will cut its customs duties by 40% and apply tariffs of no more than 10% to EC exports. Singapore's tariffs will be bound at 10% and Hong Kong applies between zero to 35% tariff cuts in favour of outside competitors, mainly industrial countries.<sup>122</sup>

At the same time, Latin American countries were also obliged to reduce their tariffs substantially with a top tariff ranging from 25% to 35%, although countries like Brazil, Argentina and Mexico resisted such tariff cuts except for textiles and clothing. These cuts will assist the economies of industrial countries who export their products to the developing countries. Considering the high level of competition with industrial countries, these tariff cuts are significant for industrial countries, as the developing countries markets have always been a prime target for western industrial exporters.

In the case of the least developed countries, it was agreed that these countries will not be required to undertake any commitments and concessions which are inconsistent with their individual development, financial and trade needs. It also allows for the completion of their schedules of concessions and commitments in market access and services by April 1995 rather than immediately after the completion of negotiations.

**d- The effects of the negotiations on farming populations**

A recent study by Australia's Centre for International Economics has used an unusually detailed model of the international trading system to examine possible outcomes of the negotiations and their effects on the farming population. The Centre has estimated that the Round has brought minimal progress on farming (even a 10% cut in protection over the next ten years), modest cuts in tariffs; but almost no progress in lowering non-tariff barriers would increase the joint incomes of North America, Europe and the Asia-Pacific region by less than \$100 billion a year. If these three regions reduced their tariff and non-tariff barriers by 50%, the total gain would be close to \$750 billion.

In practice the UR has achieved more than the Centre expected, but under all circumstances its estimates remain striking. If any region liberalised unilaterally, its gains would be substantially bigger than the estimate marked in for the GATT's attempt at multilateral trade liberalisation. Despite all attempts for liberalization of world trade, according to GATT figures in 1992, agricultural support policies in the industrial countries cost them \$350 billion (almost £ 230 billion).<sup>123</sup>

**e- The effects on net food importing countries**

The UR effects on the net food importing countries is quite substantial and it has received attention in many developing countries. It is recognized that in the course of the reform programme least-developed and net food-importing countries may face negative effects with respect to supplies of food imports on reasonable terms and conditions. It is estimated that the developing countries food commodities imports bill will be increased by 5% as a result of the final package of reforms in UR.

To reverse such adverse effects, in the course of UR, certain provisions for food aid were decided. These provisions recommended substantial grants of basic foodstuffs to those food importing countries to compensate their losses. Therefore, a special Decision sets out objectives with regard to the provision of food aid, the provision of

basic foodstuffs in the form of full grant and considering aid for agricultural development. The recourse to IMF and World Bank for short term financing was also considered.<sup>124</sup>

Developing countries may ask why they need to recover only part of their losses with donations, while it was possible to forecast their potential losses beforehand. In addition, food aid imports have a negative and direct effect on their internal markets as well as on their internal infant food processing industries. A total or partial liberalization of agricultural products have different effects to developing countries, depending on their overall trade performance.<sup>125</sup>

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## CHAPTER FIVE NOTES

1 . Professor Forrest Capie, well-known economic historian, cited in Current Controversies, number 2 '*Trade Wars: A Repetition of the Inter-War Years?*' Institute for Economic Affairs, London, (1992), p.4.

2 . Hereafter the term 'Round' will refer to the '*Uruguay Round of Multilateral Trade Negotiations*'.

3 . see Whalley John, '*The Uruguay Round and Beyond*,' The Final Report from the Ford Foundation Supported Project on Developing Countries and Global Trading System; Macmillan, (1990) p.103.

4 . Hathaway Dale E. is a partner in the Consultative International Group, and former US Under Secretary of Agriculture for International Affairs and Commodity Programs. See, Hathaway Dale E. (ed.) *World Agricultural Trade : Building a Consensus*, US, (1987).

5 .The term '*like product*' shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

6 . See *GATT/ MTN. GNG /AG /W / 1* (24 June 1991).

7 . Regarding the importance of such Declarations, it is worth mentioning that in the history of the GATT, the ministers met in GATT on only eight occasions: in 1957, 1958, 1959,1961 and 1967, in connection with annual sessions of Contracting Parties; and 1963,1964 and 1973. Also in November 1982, the first ministerial meeting took place after almost ten years of preparatory work.

8 . A good example of this was repeated in final phase of UR, since the US excluded the film and cinematographic products because of the strong rejection of French and some European nations.

9 . GATT, *BISD, Sup.33, 42 Session*, (1985-86) p. 24.

10 . Most of the suggestions were referred to binding commitments on quotas, subsidies, and subsidized quantities.

11 . The major agriculture exporting countries, the Cairns Group consists of fourteen countries from different regions of the world as: Argentina, New Zealand, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand and Uruguay .

12 . Developing Countries are not generally identified in many documents as a single identity. It is possible to assume that one of the reasons for ignoring their real interests in the negotiations is the lack of a collective voice in agricultural trade negotiations.

13 . Grandfather Clauses is special exceptions allowed through, Protocols of Accession, or *grandfather clauses* mandatory legislation predating GATT, {should be eliminated or made consistent with revised rules and disciplines

14. There are other reasons for dependence to agricultural sector in EC for example in UK the average farm size is 110 hectare, whereas this average in Greece is only 6.4 hectare.

15 . See Murphy Anna, *'The European Community and the International Trading System'* Volume 1, Completing the Uruguay Round of the GATT, (1990). P.45.

16 . European Communities Information papers, *Draft European Communities proposal for multilateral trade negotiations on agriculture in UR.*, Brussels, (6 October 1987), pp.64- 87.

17 . Ibid

18. The CAP and the GATT, il v 323, The Economist, (May 23, 1992), p. 20 (1).

19 . ibid.

20 . The Economist, *Free trade's fading champion. (UR of talks on General Agreement on Trade and Tariffs)* il v323, ( April 11, 92) p. 65 (2).

21 . Of these,17 were for steel products. But pending a new international agreement, the US has asked the countries who are not satisfied, to carry on observing the expired VERS.

The US refuses to recognise that other VERS still exist (eg, the one for Japanese cars), or have ever existed (eg, nine VERS on imports of machine tools from Brazil, Germany, South Korea, and others).

22 . These could be possible, either by selling them at less than production cost, or selling them abroad for less than their price at home.

23 . Between 1988 and 1990, the GATT reports, the Department of Commerce investigated 71 anti-dumping cases, and discovered dumping in 68 of them. In roughly two-thirds of the cases, the International Trade Commission (another arm of America's trade bureaucracy) then found that there had been injury. Both anti-dumping and countervailing duties can be punitive, but that is not their main trade-distorting effect. See more in: Rubin Seymour J.and Mark L. Jones, *Conflict and Resolution in US-EC Trade Relations at the Opening of the Uruguay Round*, Oceana Publications, INC. New York, (1989).

24. It should be stated that the 1988 US 'Omnibus Trade and Competitiveness Act' (O-TCA)added strict time limits for completing the section 301 process. When an alleged trade agreement violation or case is reported to be 'unjustifiable' and burdens or restricts US commerce, the Act makes retaliation mandatory rather than discretionary. It may thus oblige the US government to take further action contrary to its international obligations.

25 . Section 301 actions against Japan, India and Brazil in 1989 attracted impressive attention; In recent years, action under section 301 has been used with some moderation.

26 . The idea of unfair trade practices was later extended in the 1988 Omnibus Trade Act to cover trade practices of whole countries ("Super 301").Bilateralism was discussed previously in relation to Israel, Canada and Japan. It endorsed first in the 1985 US-Israel free trade agreement, then in the much bigger US-Canada free trade agreement initiated in December of that year, and(in a different way) in the US-Japan structural impediment initiative of 1989.

27 . Supra No. 20.

28 . The US target in this area was the reduction of world trade barriers by a third. They assumed that it would generate in the US alone an additional \$1.1 trillion a year in domestic output over the next decade. That is \$ 17,000 for the average family of four. It shows the importance of the service sector in the US economy. See: Hills, Carla A. "*What the United States Stand to Lose If the Trade Talks Can,t Be Revived*", the US Trade Representative. *Los Angeles Daily Journal*, No. 248 Tuesday,( Dec. 13,1990).

29 . UR seeks 7 objectives. (Opinions and Comments) by Frederick L. Montgomery v 98 American Metal Market, (Oct. 1990), p.14(1)

30 . Supra note 28.

31 .To symbolise the significance of these new issues, it was in 1989 estimated that these four areas alone accounted for more than one-third of entire world merchandised trade or over \$1.5 trillion. See more in: Hopkinson, N. The UR And Prospects for World Trade. Wilton Park, London, HMSO, (1990).

32 . It should be noted that as tariffs have decreased, non-tariff barriers have increased. Moreover, areas inadequately covered by agreed rules, like agriculture, or not covered at all, like intellectual property rights, services and investment, have become of much greater importance than they once were, especially for industrial countries.

33 . Most of the disagreements lie in agricultural produce and foreign trade deals in these countries. An obvious example of this, was the oilseed case which existed as early as the Dillon Round period, and was discussed in previous chapters.

34 .See *Commission of the European Communities Paper on UR*. Brussels, AM/ SMK, (Feb.1991).

35 . It is worth mentioning that the EC's farm trade deficit with the US was only \$3.5 billion. The Community also runs large agricultural trade deficits with its Lome' partners, at the same time the EC buys from Latin America more than US.

36 . Hopkinson Nicholas, *Completing the GATT Uruguay Round: Renewed Multilateralism or a World of Regional Trading Blocs ?*, Wilton Park Papers, (1992), p.9.

37 . See: *the introduction to the GATT Agricultural Agreement*, by Trade Policy & Tropical Foods Division, MAFF London, (Dec.1993).

38 . Payments would be linked not to output itself, but both to the area of land under harvest and to a regional measure of yield that almost weakens the link between support and production. The MacSharry plan went further, by shifting cash away from big cultivators- the biggest 20% now receive 80% of all subsidies to small ones. Even so, it would not cut production enough to decrease dumped exports by 24%.

39 . It was mainly at Britain's insistence. As a result, output would drop by even less than under the MacSharry plan; and the dumped surplus, which is what US and others care about, would fall by much less than 24%.

40 . Supra No. 20.

41 .The Economist, *GATT reprieved?* (editorial) il v 321 (Oct.19, 1991), p.15(1).

42 . *Once and future GATT; beyond the Uruguay Round, will the world need a new trade watchdog?* GATT, (A Survey of World Trade) by Clive Crook, The Economist (Sept 22, 1990) p.37(3).

43 . 'Green list' and 'amber list' will be explained further in this Chapter.

44 .These policies are: price support, deficiency payments, input subsidies etc. which are considered as having an effect on production and trade.

45 . Base year 1986-88 and duration was 1993-99.

46 . See *the Draft Final Act*, tabled by the then GATT Director General, Arthur Dunkel, in (Dec. 1991), in GATT / MTN/ FA II- AIA-3

47 . Commission of the European Communities, Brussels, Communication from the Commission, Brussels, ' *The EC and the UR*' (25 Nov. 1992), p. 17.

48 . Ibid. p.4.

49 . See Ibid, p.5.

50 .This excludes olive oil.

51 . Cited by: Pesquet, Jean Jacques in *APROMA Bi-monthly Review*. No.31, (March-April 1993).

52 .These are mainly because of limiting the areas under oilseed cultivations in EC countries and equal compensations payment to EC oilseed producers, up to the world level.

53 .See more details of these outcomes in op. cit. No. 51.

54 . It was also agreed that the Community would provide a tariff concession for the import of 500.000 ton of maize. The production of oilseeds for non-food production on set-aside land will be possible up to a certain level corresponding to a maximum by-product level of oilseed meal (1 million tons of meal expressed in terms of soya meal equivalents, which is the traditional formula to compare the fodder resulting from different oilseeds).

55 . GATT, News of the UR, *NUR 014 to NUR 023 inclusive*, GATT, (1988), p.6.

56 . See more in UN, *UR, Further Papers on Selected Issues*, prepared by UNCTAD/ITP/42, Geneva, 1990 at p.43. and Hopkinson, op. cit. No. 31, p.20.

57 . See more in: International agricultural Trade Consortium, *Bringing agriculture into the GATT*, negotiating a framework for action, (1990), No. 7.

58 . See more in: *Interest of developing countries in the Uruguay Round*, by Bela Balassa il VII World Economy, (March,1988), p.39 (16).

59 . Op. cit. No. 3, P.122.

60 . *Negotiators are at work in Geneva to conclude the Uruguay Round*, by Louis J. Murphy v112 Business America (Sep. 23, 1991) p.12(5).

61 . Supra No. 56 : UN, *UR, Further Papers on Selected Issues*, prepared by UNCTAD/ITP/42, Geneva, (1990), p.42.

62 . Supra No. 55.

63 . Supra note 61, UN, p.42.

64 . See Ibid.at p.42.

65 . Annex 1A, *Accords sur le commerce des marchandises*, English translation,UR, papers by Commission of the European Communities, Brussels, (20 Dec. 1993), p.23.



66 . It must be remembered that since the Brussels Conference, the MFA has been renewed three times unchanged and will remain in force probably in force until the anticipated date of 1 January 1995. It means that the ten-year transitional period foreseen in the original draft agreement became at least 13-14 years.

67 . It is worth mentioning that services account for 66% of USA output and 76 % of total jobs in the US economy. In other words this sector provides nearly \$90 billion in exports annually. It also accounts for 25% of total world trade.

68 . The former Indian Deputy Director General of the GATT, and one of the experts in developing countries affairs.

69 . Since services and intellectual property are not the subject of the present thesis, the discussion will conclude at this stage. For further information see. Once and future GATT; beyond the Uruguay round, will the world need a new trade watchdog? (General Agreement on Tariffs and Trade), *A Survey of World Trade*, by Clive Crook il v 316 The Economist (Sep. 22, 90), p. S37(3).

70 . See Anna Murphy, *Supra* No.15 Vol. 2, p.124.

71 . Dependence on single tropical products such as cocoa, coffee and bananas is very common in many African and Latin American states.

72 . See more information in: *Tropical products in the UR negotiations*, by Murray A. Cobban v11 World Economy (June 1988) p.233(16).

73 . *Supra* No. 60.

74 . The Standstill and Roll-back terms mean:

"(i) not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the Instruments negotiated within the framework of GATT or under its auspices;

(ii) not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement and the Instruments referred to in (i) above;

(iii) not to take any trade restrictive or distorting measures in such a manner as to improve its negotiating positions."

75 . For example: it is based on producer subsidy equivalents or other commodity -specific standards.

76 . See Dale Hathaway, *and Reforming World Agricultural Trade*, Institute For International Economics, London, (1987).

77 . For more information on the Mid- Term review in: Latin American Consultation Meeting on the Uruguay Round of Multilateral Trade Negotiations, (Fifth Meeting), *Latin American Economic System*, (SELA ), Geneva, (1990).

78 . Bernhard Zeper, *prospect for the Uruguay Round*, GATT & conflict of management, London, (1989).

79 . The deadline for concluding the UR was repeated many times but finally the negotiations were concluded at Geneva by 15th December 1993.

80 . Negotiators are at work in Geneva supra No. 60.

81 . Kenneth R. *Three scenarios on Uruguay Round* American Metal Market, part 2 Opinions & Comments (Transcript) v 99, Fairchild Publications Inc. (1991) p.10(1) .

82 . Such internal agreement allowed decisions to be made on the other issues necessary to complete a comprehensive agreement in spring 1992 or after.

83 . In practice the negotiations were continued, seeking a final resolution on agricultural trade issues. There were those who said that the negotiations must succeed simply because a failure would have damaging impacts on world trade. However, some trade observers have countered that in the past a conventional way to avoid a 'failure' has been to set a less-ambitious definition of 'success' in principle and accepting scenario number two consensus.

84 . Ministerial Meetings Text, Uruguay, press release, (French Translation) GATT /1386 (25 Sep.1986), p.9e

85 . Supra note 28, p.6.

86 . Supra note 60.

87 . See: *Final Agreement on Agriculture*, GATT MTN/FA II-A1A-3 Geneva,(1993).

88. These concessions are to be recorded in national schedules which will form an integral part of the Final UR Act.

89. See MTN. *Trade Negotiation Committee /W/FA*, obtained from Ministry of Agriculture and Fisheries, UK.

90. It was the same draft proposal that was discussed earlier under '*Dunkel Plan*' in this chapter. There were some changes as the result of the Blair House Agreement between the EC and US in November 1992, these changes were modified in the final phase of UR negotiations between the EC and US.

91. See more in: Commission of the European Communities, *The European Community and the Uruguay Round*, November 1992, and 'The UR Global Agreement Global Benefits', (1994).

92. Schott, Jeffrey J.,ed., *Completing the UR: A Result-oriented Approach to the GATT Trade Negotiations*, Institute for International Economics, Washington DC, (September 1990).

93. See Annex 2 of the *FAA*, GATT, MTN/FA II- A1A-3 Geneva, (1993), p. L.24 attached in the last Annex of the present thesis.

94. See Part IV, Article 6, Paragraph 4(b) of the *FAA*.

95. The Agreement also contains certain provisions aimed at preventing the circumvention of export competition commitments, for example by setting out criteria for international food aid donation to third world countries.

96. It should be realised that under the Blair House Agreement, this does not include production limited area or headage payments already agreed under the CAP package.

97. It should be realised that such distinction is that for the less-developed countries as a whole, the differential is permanent, with individual countries 'graduating' as their economic situation improves, whereas, for the countries in transition, it is temporary and will be phased out over time.

98. It is based on the reduction commitments under Article 9 of the UR, *FAA*, p. L.1.

99. See more in Commission of the European Communities, '*Report on US Trade and Investment Barriers*' (1993) Brussels, at p.56.

100. For the purpose of these definitions 'animal' includes fish and wild fauna; 'plant' includes forests and wild flora; 'pests' include weeds; and 'contaminants' include pesticide and veterinary drug residues and extraneous matter.

101. '*Agreement on Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme*,' p. I.39, Sub-Article 22.

102. It is based on the Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection under Article 20 of the UR Agreement on Agriculture: *FAA*. p. L.38.

103. See *ibid*.

104. For example if the use of lead in cans is considered as unsuitable or hazardous, according to health and sanitary regulations, and a replacement with aluminium substances is recommended. From a technical point of view it will take a long time for replacement of machinery.

105. See Article 13 of the *FAA*, *GATT MTN/FA II-A1A-3*.

106. See *supra*, No.91.

107. The Appellate Body members would serve four-years terms and would be persons of recognized authority, expert in law, international trade and GATT matters generally. They would be unaffiliated to any government but, together, would be broadly representative of membership.

108. See more in: *The Final Act of the UR of Multilateral Trade Negotiations*.

109. See Article 1 in part one of the *FAA* text, and Annex No. 1 of the same text at the end of present thesis.

110. There was also agreement on the procedures for consultation by the GATT "*Balance of Payments Committee*" as well as for notification of the measures. These could be interpreted as useful to developing countries in order to consult when they lack expertise in implementing the bop measure.

111. Among these measures licensing systems in particular will be greatly curtailed, notably in Latin America, India and Pakistan. There was a reference to IMF guidance in this issue.

112. See *Supra* No. 91.

113. *The move toward free trade zones*, by Paul Krugman il v76 *Economic Review* Nov -Dec '91 p.5(21)

114. For a complete examination of the conflicts and the reasons that leads to the failure of ITO, see: Brown, W.A., *The US and the Restoration of World Trade*, Brookings, Faber, (1950).

115. See more in, Commission of the European Communities, *supra* No. 91, p.27.

116. See Schott Jeffrey J. *supra* No. 92, p.32.

117. 'Round and round'. (General Agreement on Trade and Tariff's Uruguay Round) v 316 *The Economist* July 28 '90 p56(1).p. 56 (1)

118. See *ibid*.

119. It was endorsed first in the 1985 US-Israel free trade agreement, then in the much bigger US-Canada free trade agreement initiated in December of that year, and (in a different way) in the US-Japan structural impediment initiative of 1989. See also: *The UR: an unfinished symphony*. (first in a series) by Sylvia Ostry vol. 28, Finance & Development, (June 1991) p.16(2)

120. *GATT reprieved?* GATT 'editorial' il v 321. *The Economist*, (Oct. 1991), p.15(1), Have the odds on a successful UR improved?

121. *Ibid*.

122. 'Accords sur le Commerce des marchandises', English translation, UR, papers by Commission of the European Communities, Brussels, (20 December of 1993), p.16.

123. *Sunday Times Newspaper*, (12 Dec. 1993), U.K. p.9.

124. See: Stevens Christopher, *After the GATT Uruguay Round, Implications for developing countries*, Institute of Development Studies, IDS Briefing Paper (April 1994), UK.

125. See Das, B.L. and Jayawardena L., *Agricultural Trade Liberalisation in the UR: Implications for developing countries*, A joint UNCTAD/ UNDP/ WIDER (UNU) study, UN, Geneva, (1990).

## CHAPTER SIX

### RECAPITULATION AND CONCLUSIONS:

SEEKING AN OPTIMAL PERSPECTIVE (LEGAL FRAMEWORK) FOR  
THE AGRICULTURAL TRADE REGIME OF DEVELOPING COUNTRIES.



The sad reality of barriers facing developing countries in their exports to industrialised countries markets. Source: Artist KAL, Langhammer Rolf J. and Andre Sapir, 'Economic Impact of Generalised Trade Preferences,' Thames Essays No.49, Trade Policy Research Centre, London, (1987).

## INTRODUCTION

Poverty was the consequence of a chain of exploitation through which small towns in the periphery expropriated surplus from the rural areas, large cities exploited the towns, and in return the large cities were exploited by the cities in the metropolis. Surplus extraction was the result of unequal trade arrangements; crudely, the weaker partner in each trade relationship received less than its 'exports' was worth and paid more in 'imports'. Ultimately, most of the surplus from this process of unequal exchange was accumulated by the metropolis<sup>1</sup>

This final Chapter attempts to seek an optimal legal regime for the agricultural trade performance of developing countries in the GATT system. Such a legal framework is supposed to be there to serve all contracting parties on a basis of certain fair rules and provisions. The area of investigation (agricultural trade) is the most controversial issue in the history of the GATT, and is always subject to conflicts of interest between the two groups of industrial and developing countries. However, the main deadlock over agricultural issues in the final UR negotiations is not mainly the consequence of this conflict of interests, but lies within the disputes of industrial countries over farm subsidies. What was finally agreed is an attempt by the leading industrial contracting parties to reach a consensus over several crucial issues of which agricultural support measures was the most important.

Before investigating the achievements of different parties in the negotiations, certain questions may be raised as to what would be an optimal perspective for relations between developing and industrial countries. Could the result of the UR help to fill the huge legislative gap in the existing system, or should the developing countries abide by the final outcome ? Is the proposed WTO going to pay more attention to the problems of developing countries more than did its predecessor ?

## **I. SEEKING AN OPTIMAL PERSPECTIVE (SOLUTION) ?**

An optimal trading regime should offer a package of measures that takes into account the consideration of all parties. It should also offer practical opportunities as well as legal rules of practice for all participants. In other words, under an optimal legal trading regime each participant should get their fair share of the market, although there is difficulty in the definition of fair if equality is to be included. It may be argued that under the present situation equality is not appropriate but being fair is a more practical and possible procedure that does make sense. It is crucial to discuss the criteria of fairness between developing and industrial countries. For example, trade barriers are the main obstacle to a liberal flow of trade in the world. In such a situation countries who have weaker bargaining positions receive less benefit from the trading system.

One may ask whether the current economic policies under the dominance of industrial countries are sufficient to do justice to the weaker developing countries. If not, should wealthy countries adopt different policies involving a principle of legal obligation to treat the economic interests of developing countries much more favourably than hitherto under GATT ?

Hudec<sup>2</sup> argues that there were usually two broad economic and legal categories of criticism relating to the GATT's policy towards developing countries. Considering some economic criticism, the dominant belief has been and is that the economies of developing countries will benefit from trade protection. Simultaneously there are many commentators who challenge this view and argue that trade protection will reduce the economic welfare of these countries. Although criticism opposing this view may seem logical, it is worthwhile to examine it in more detail.

The second criticism is directed towards the legal trade policy. This considers that a one-sided non reciprocity system does not work properly, and argues that reciprocity is necessary to include meaningful, and legally secure improvements to facilitate the access of certain competitive agricultural products from developing countries to the markets of industrial countries. It believes that the non reciprocity doctrine is really an obstruction, instead of aid, to achieving such market access.

#### ***A- IS THE PRESENT TRADING SYSTEM FAIR ?***



One of the main questions that all participants in a trading system should answer is whether the present system is fair in dealing with them or not. In the course of this thesis it was shown that developing countries are not receiving their fair share of the market. Many industrial countries have also accepted this reality.

Referring to US unfair trade practices, Sen. John Taylor admits that: '*Fair Trade*,' as the term is now used, usually means government intervention to direct, control or restrict trade. By fair trade it means government officials deciding what the US may be allowed to buy and what prices they have to pay.<sup>3</sup> He states:

Fair trade means that Jamaica is permitted to sell the US only 35,292 tons a year, ...and that Haiti is able to sell the US only, 7,730 tons of sugar a year. Fair trade means permitting each American citizen to consume the equivalent of only one teaspoon of foreign ice cream per year, two foreign peanuts per year and one pound of imported cheese per year. Fair trade means that the US Congress can dictate more than 8,000 different taxes on imports, with tariffs as high as 458 percent.

According to a US Federal Commission estimate in 1984, imposition of certain tariffs cost the US economy \$81 for every \$1 of adjustment costs saved. In addition, according to the Institute for International Economics, trade barriers are costing US consumers \$80 billion a year. In other words it costs more than \$1,200 for each American family.<sup>4</sup>



Many dimensions on the question of fairness were discussed in previous chapters of the thesis. It is possible to conclude that many developing countries consider the system as being unfair in treating them equally in comparison to industrial countries and taking care of their real needs.

On the question of the fairness of the present trading system it must also be recognised that, for several decades, agriculture has escaped being subjected to the rules and disciplines of the GATT. Some developing countries have continued to provide considerable governmental support to exports and to domestic production. At the same time, the access of agricultural products to the markets of several industrial countries have been inhibited by tariffs and various non-tariff measures, mainly because of waivers and special provisions in protocols of accession by industrial parties in the agricultural sector. The result has been the imposition of constraints on efficient producers and exporters, particularly among the developing countries, since they could not afford to engage in competitive subsidisation in comparison to industrial countries. Their market opportunities have thus seriously diminished, while for many developing countries agriculture offers the only real possibility for income growth and generation of foreign exchange earnings.<sup>5</sup>

The regional pattern of trade growth in 1992 was shaped by divergent trends in economic activities among the regions. The table below is a self evidence of the degree of divergence in the world trade especially the huge gap between the industrial and developing countries.

TABLE No. 16

Value of world merchandise trade by region, 1991-1992  
( Billion dollars and percentage )

Countries and Regions	Exports (f.o.b)	Import (c.i.f)
	Value 1992	Value 1992
World	3,700	3,830
North America	580	685
Latin America	150	170
Western Europe	1,705	1,770
EC	1,455	1,520
EFTA	225	215
Central & Eastern Europe	85	90
Africa	95	100
Middle East	120	125
Asia	970	895
Japan	340	235
China	85	80
Six other Asian exporters of manufactures *	415	430

Figures are affected by difficulties in covering data expressed in national currencies into dollars. See Box 1 Volume 1 of International Trade 1990-91. China Taipei, Hong Kong, Republic of Korea, Malaysia,Singapore and Thailand .

***B-THE MAIN SOLUTIONS FOR AN OPTIMAL PERSPECTIVE FOR DEVELOPING COUNTRIES' AGRICULTURAL TRADE.***

In an optimal perspective all contracting parties should squeeze maximum benefits from the existing provisions. There are many articles and provisions that could favour developing countries. In the course of the thesis and highlighted in Chapter Four, these provisions were explained in detail. Some of the striking issues that are of particular importance could be considered as the subject of an optimal perspective which lays down certain solutions as follows:

***(1) Protection of developing countries internal markets***

The previous two decades have seen historically unprecedented rates of economic growth in many of the developing countries,<sup>6</sup> achieved principally through improved mobilization of their own resources.<sup>7</sup>

These countries are questioning how they can defend themselves against the demands for widening their markets to industrialized exports, since it is very difficult to withstand the flow of cheap, higher quality products that incorporate more technologically advanced innovations within them from industrial markets.

There are many ways that developing countries could overcome the present situation. They need to protect their internal markets and encourage their infant agricultural processing industries. They need to integrate themselves into regional trading associations to be able to extend preferential treatment to regional producers. Otherwise the free access of extra-zonal suppliers (competitors) to their markets could devastate the integration movement in certain regions and thwart the increasing trend of South-South trade and investment.

***(2) The establishment of buffer stock systems.***

One of the common mechanisms for controlling the export level in industrial countries, especially in the EC and US, has been to create a buffer stock system. Faster growth of production than of consumption and the resulting high stock levels have exerted a depressing influence on commodity prices. The main aim of such schemes is to establish a balance between production and consumption. Cereals stock in US and dairy (especially butter) stock in the EC are examples of industrial countries' practices.

A practical example illustrates the importance of the application of a buffer stock on the consumption, production, stocks and market prices for coffee and cocoa products

for the past decade.<sup>8</sup> This shows a rise of consumption in both products in the world. In the case of cocoa it was even stronger, because of the more rapid growth of production. Since the stocks of these products in industrial countries were already high, it resulted in the lowest prices since the mid-1980s. This means that the stock system could play a negative role against developing countries since major stocks are controlled by industrial countries.<sup>9</sup>

The stock system may appear in three different shapes; i)- national stocks; ii)- quasi-national stocks (i.e. internationally coordinated as in the 1977 ISA); or iii)- international or so called buffer stocks. There is a similarity between the export quota system, and buffer stock system since it (the former) serves the same objectives by balancing supply and demand.<sup>10</sup>

An adequate stock system could help an agricultural producing or even importing country to reserve a substantial amount of goods when the market price is low in order to release them when there is a shortage of products. This serves to stabilize the price and secure a relatively fixed source of income. At the same time the management and technical aspects of the system should not be underestimated.<sup>11</sup>

The main concern regarding the application of the system by developing countries is that the inherent unpredictability of the world markets requires a sufficient, accurate and reliable forecast of the market prices in order to use the buffer stock mechanism for regulating international agricultural transactions. As these countries generally lack the relevant market intelligence, many of them are not able to create such stocks.

### **(3) Active role of International Trade Centre**

As indicated in Chapter Two, the Centre responds to developing countries' requests for assistance in formulating and implementing export promotion programmes. It provides information and advice on export markets and marketing techniques, and helps in establishing export promotion and marketing services, and training personnel required for such services.<sup>12</sup> If the Centre functions according to its basic principles, it can be regarded as a helpful technical instrument for any inexperienced developing country in order to cope with the complex and conflicting world of economic and foreign trade exchanges.

The developing countries need further progress *inter alia* information and market intelligence. In one of the recommendations of the Report by '*Committee III of Trade Information and Trade Promotion Advisory Service*'<sup>13</sup> it was suggested that there is a vital need to provide: ...a)- establishment of a documentation centre and operation of a clearing house for trade information; b)- provision of a '*correspondence- answering service*'; c)- publication of a '*Register of Sources of Trade Information*'; d)- resumption of publication of the '*International Trade News Bulletin*', in a form designed to meet the special needs of the less-developed countries; e)- preparation of a manual on efficient means for establishing and operating export promotion services;.

The main function of the ITC has been to assist developing countries with trade information and market surveys. Four categories of technical co-operation programmes could be found to assist developing countries and their agricultural programmes:

- i)- Special Programme of Technical Co-operation with the least developed countries;
- ii)- Trade promotion oriented to rural development;
- iii)- Technical Co-operation with national Chambers of Commerce;
- iv)- Follow-up action on the MTNs.<sup>14</sup>

Owing to the lack of knowledge and expertise in international negotiations within

many developing countries, the Centre can actively provide a good base for assisting them. These could be done through practical programmes such as:

- i)-Regular visits from developing countries by independent experts to discuss trade problems and trade promotion opportunities.
- ii)- Consultation assistance regarding the day to day problems of developing countries.
- iii)- Legal assistance for those countries who are involved in dispute settlement panels.
- iv)-Training civil servants from developing countries. In this regard the ITC organized trade promotion sessions at its headquarters as part of two annual GATT trade policy courses for developing countries. There are other official lectures in various ITC training events throughout the year. <sup>15</sup>

ITC activities may be diverted into eight programme areas:<sup>16</sup> 1)- institutional infrastructure for trade promotion at the national level, 2)- special national trade promotion services, 3)-export market development, 4)-commodity promotion, 5)-training, 6)- import operations and techniques, 7)- trade promotion for least-developed countries, 8)- activities with national Chambers of Commerce.<sup>17</sup>

Among the newer ITC activities that received special attention in 1992 were export business development, including enterprise-oriented projects, trade in technical consultancy services, and export-oriented joint ventures; promoting trade in a variety of agricultural and raw materials, and producing a number of trade promotion handbooks and training materials in 1992. These steps are very helpful for developing countries and increase their awareness of how the GATT system functions.

#### ***(4) Financial support and monetary considerations***

The legal base for monetary co-operation in the area of trade and development in the GATT could be Article XXXVI(6) which clearly emphasises the importance of

international lending agencies for contributing to the economic development of third world countries and the important inter-relationships between trade and financial assistance for development. As indicated in Chapter One, the international monetary establishments such as the World Bank and IMF should have clear guidelines to use their resources for the purpose of economic development in a more constructive way.

In addition other agencies such as European Development Fund (EDF), the STABEX stabilization of export prices scheme between the EC and ACP countries.<sup>18</sup> and lastly, '*The Western Grain Stabilization Program (WGSP)*',<sup>19</sup> that present a kind of insurance for agricultural products could be considered as practical models for the stabilization of prices and monetary support in developing countries.

Such measures are to help developing countries to fund their agricultural sector and to stabilise their markets. For example when the price of bananas is under pressure by fluctuation many producers will suffer, whereas in the industrial world the prices of Japanese cars and similar industrial products, are not under such pressure. Stabex and other monetary systems are practical ways to avoid such losses in the developing world.

**a- The establishment of funding arrangements.**

This is another way of tackling the problems of developing countries that accrue as a result of industrial countries protectionist policies. The Cairns group proposed a scheme for granting compensation to developing countries' trade losses, as a result of measures applied against them which are not supported by scientific evidence. In addition to the proposal by the Cairns group, several studies have concluded that reductions in agricultural support and protection will lead to higher world market prices for most products in the short term, as demand expands and supplies contract. Such pressures force the developing countries to pay more for their basic consumer goods. The best example of this can be observed particularly for sugar, red meat, and dairy

products.

Another proposal, that submitted by Egypt, Jamaica, Mexico, Morocco, and Peru in this area, demanded that increased financial resources be made available to the net food importing developing countries to reduce the burden of increased import prices resulting from global agricultural reform, and to enhance their agricultural productivity and production. The main elements of such measures for reducing higher food bills are as follows:

- enhancing purchasing capacity through concessional sales, including increased availability of low -cost export credits and grants;
- increasing export-creating capacity of net food-importing countries, through improved market access conditions for their agricultural exports, by immediate tariff and non-tariff measures or trade distorting support;
- increased food aid, through inter alia, a flexible approach to the usual marketing requirements, and triangular arrangements which safeguard and promote protection and exports of developing countries; and
- flexibility in structural adjustment programmes which are negotiated with international financial organizations.

Considering different initiatives for funding arrangements in favour of losing parties, it seems that a global approach in this area is necessary to co-ordinate all individual approaches and to establish a Global Multilateral Arrangement (under the GATT sponsorship). It may compensate or give long term investment grants to developing countries who face losses as the result of industrial countries liberalisation policies.

#### ***(5) Proper use of Article XXIV in favour of developing countries***

Regional trading arrangements under Article XXIV are believed to be helpful to all contracting parties, including developing countries. In practice, however, any radical shift towards expanding regional arrangements will undermine market access opportunities for the rest of the contracting parties. Some politicians and economists



despair of GATT's multilateral process and would like to see further effort focused on regional or bilateral negotiations as more likely to achieve better results.<sup>20</sup>

Customs unions and free-trade areas are lawful exceptions to MFN treatment but, bearing in mind the criteria set out in Article XXIV for regional arrangements, and considering their wide dimensions, it is difficult to see how the MFN principle is able to operate when it encounters such enormous exceptions which may transform the entire global trading system ultimately into regional blocks.<sup>21</sup>

Considering the previous discussions on the advantages of local or regional trading arrangements, and comparably equal bargaining positions and treatment for developing countries on their operation, it is possible to conclude that regional arrangements have potential economic benefits for developing countries. In practice the industrial countries have '*won the game*', and consequently regionalism is growing faster in industrial countries than among the developing states.<sup>22</sup> In a critical comparison between the successes of regional free trade agreements, and the failure of efforts to liberalize trade at the global level, it is possible to see how those two issues contradict each other.

A compromise in this area which would make regionalism more consonant with GATT would be to insist that any country that joins a free trade area must simultaneously reduce its external tariffs for all GATT contracting parties.<sup>23</sup> It should be noted that regionalism and multilateralism are not alternatives because 58% of global trade exchanges are inter-regional. In any case, cheap international air transport is eroding the advantage of trading with near-by partners.

**(6) Proper application of Part IV of GATT by more co-operation and negotiations among developing countries .**

As stated in Chapter four many development reports emphasise the significance of trade among developing countries. Trade between developing countries only represents 3% of the world merchandised trade. At the same time industrial countries markets absorbed almost 75% of the world exports of manufactured goods in 1990 (against 41% in 1965).<sup>24</sup>

In an optimal trading perspective all contracting parties should have a right to be involved in bilateral or multilateral negotiations. When industrial countries promote their trade performance by building regional treaties such as EC, NAFTA, etc. the developing countries should also seek more co-operation and exchange of commercial goods among themselves by using similar models. The legal base for such arrangements are Article XXIV and part IV of the GATT. Article XXXVI (4) in Part IV, *inter alia* emphasises cooperation among the least-developed countries. Furthermore, regional co-operation among developing countries could be derived from Article XXXVII of the General Agreement.

One example of such co-operation was the 1967 agreement between India, United Arab Republic (Egypt) and Yugoslavia called '*The Trade Expansion and Economic Co-operation among the parties*', . It was also open to the participation of other developing countries. In addition the 1973 '*Protocol Relating to Trade Negotiations Among Developing Countries*' was another significant step in this area. Its objective is to increase trade exchanges among developing countries.

The Protocol will be governed by the Committee of Participating Countries. In addition the Committee is in charge of to day-to-day issues relating to the operation of the Protocol. One of its interesting features is the participation of developing countries

who are not contracting parties to the GATT.<sup>25</sup> Such participation may give them a united voice to stand up against unfair decisions and practices of industrial countries.<sup>26</sup>

The main task of the Protocol is to exchange mutually advantageous trade concessions through the identification of complementary features in the structure of trade and production of the participants. Until 1988 some 500 tariff concessions were exchanged in this way, about one quarter of them covering agricultural and raw materials and the rest processed and manufactured products.<sup>27</sup>

***(7) Adjusting the present rules and articles of the GATT and a fundamental change of agricultural provisions.***

Two central GATT principles need to be re-examined: '*national treatment*' (of foreign businesses comparable to that received by native business in the host country) and '*MFN*'. In order to end certain unfair practices a single standard is needed. '*GATT treatment*' would enable all members to contribute fully to the system and play by the same rules. Achieving such a goal may require creating a '*super-GATT*', perhaps a small homogeneous group of countries willing to take on new obligations.

One commentator has said: "*Most current GATT benefits would remain for members who chose not to participate.*"<sup>28</sup>

As was discussed in Chapter two, the rules and disciplines on agricultural trade are spread over several articles or provisions which are largely unenforced, inadequate or unenforceable; as well as other instruments, codes, and decisions. Many of the areas such as safeguards, quantitative restrictions, subsidies, market access and graduation issues have been subject to lengthy and controversial negotiations and some improvement and adjustment has been made especially during the TR and UR negotiations. The special treatment for agriculture of certain contracting parties' has also received special attention. Thus, a key question and preoccupation in the negotiation of

improved and operationally effective GATT rules and disciplines is universality: comprehensive policy coverage, overall balance of rights and obligations, and rules of general application.

GATT needed more fundamental reforms for accommodating the interests and active participation of developing countries. The feeling among many participants is that new commitments should be incorporated into the General Agreement itself through new provisions, or through interpretative notes to the present rules with equivalent legal force thereto, rather than under separate arrangements or codes (with limited participation). It seems that a substantive improvement of the present GATT structure would be more beneficial and desirable than setting up a new institutional framework such as WTO. It may be one of the reasons that even under different structure, the WTO is generally based on GATT rules. At present the following changes in the GATT RULES are more desirable:

**a - A clear definition of agricultural products.\***

As discussed in Chapter two, Article XI:2(a) permits export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other essential products. There is no provision under the GATT for an importing country to restrict imports of foodstuffs in order to assure or encourage domestic production for food security reasons, since the flood of cheap imports dumps the national products and further investment in food production. A *permanent* exception in this area could possibly assist *importing countries*.<sup>29</sup>

It was agreed in the FAA that when a contracting party applies any new export prohibition or restrictions on foodstuffs in accordance (conformity) with Article XI 2(a) they shall observe two criteria:

1)-They '*shall give due consideration of the effects of such prohibition or restriction on*

*importing members 'food security';*<sup>30</sup> 2)- Before the institution of such export prohibition or restriction by any party they are obliged to notify in writing, "*to the Committee on Agriculture comprising such information as the nature and the duration of such measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.*"<sup>31</sup> The other important decision in relation to developing countries was that the provisions of Article XI 2(a) shall not apply to any of them, unless the measure is taken by a developing country which is considered as a net-food exporter of the specific foodstuff in question.

One area of dispute has been the lack of a clear and comprehensive definition of agricultural products. Perhaps a clear definition of agricultural products and foodstuffs could help to resolve disputes over different commodities that may come under the foodstuff categories. The lack of such provisions and the ambiguous definition of food commodities acts as a negative measure against developing countries.

In reality the rules governing trade in agriculture are normally weaker than those applying to other goods because governments have insisted on the right to restrict imports and assist exports in order to protect or support farm incomes. The serious trade conflicts and the high budgetary costs experienced in agriculture in the 1980s' combined with the growing realization that farm programmes are not working effectively, convinced governments to begin negotiations to establish a '*fair and market oriented agricultural trading system*'. They also realized that stronger trade disciplines could not achieve the required reforms on their own.<sup>32</sup> In relation to Article XVI three interrelated improvements might be considered as follows:

i)- the existing Article XVI:1 (second sentence) obligation to discuss the possibility of limiting subsidization which has been determined by the Contracting Parties to cause or threaten serious prejudice should be converted into an obligation to take appropriate

remedial action in cases involving displacement in individual markets;

ii)- a conventional and readily ascertainable indicator of what constitutes an '*equitable share*' should be introduced as a reference point for countries using export subsidies together with general policy guidance for the determination in contested cases of whether a share acquired through the use of subsidies is, or should be treated as, '*more than equitable*' under Article XVI:3;

iii)- a particular regime should be considered on the subsidization of agricultural primary products which are incorporated in processed agricultural products.

Perhaps the strengthening of the concept of serious prejudice under the second sentence of Article XVI:1 would be intended to establish a greater degree of harmony or equivalence of obligations within Article XVI as a whole.

In addition to strengthening the rules governing sanitary and phytosanitary regulations, it seems necessary to install an improved basis for consultations in which expert opinion, technical as well as trade policy, would have a role to play. Whether we could go beyond this, towards some element of compensation where concessions are nullified, is an open question. Concern was also raised over the trade effects of rules covering scientific evidence, international standards and national treatment since these are some of the main obstacles to developing countries agricultural trade.

For many years governments have traditionally been reluctant to accept international rules which directly constrain their choices of internal support policies for agriculture.

In negotiating stronger rules, one of the main concerns should be rules related to the use of internal subsidies and other support programmes and conditions for policy adjustments. As governments adjust their policies to less trade-distorting policies and freer trade, there is likely to be more frequent use of emergency actions on imports

subject to Article XIX and other safeguard mechanisms such as anti-dumping and countervailing duties (Article VI).<sup>33</sup>

**b- A selective application of safeguard measures under Article XIX .**

A selective application of the safeguard measures under this Article would contribute to the proliferation of various market sharing arrangements for certain products in which developing countries have an internationally competitive advantage. Developing countries contracting parties have specific questions that deserve particular attention: i)-reaffirming and institutionally strengthening a non-discriminatory approach to the application of safeguard measures; ii)- clarifying and delineating more rigorously the basic concepts covered by Article XIX, including the need for specifying the reasons for increased imports, the causal link between increased quantities of imports and '*serious injury*' to domestic producers of like products, as well as the need to define the concept of '*serious injury*'; iii)- establishing an obligation that the introduction of safeguard measures should be accompanied by structural adjustment measures to be implemented in a transparent manner; iv)- working out a programme for phasing existing 'gray-area' measures; v)-ensuring effective surveillance in any new multilateral safeguards system.<sup>34</sup>

There is a serious need to improve GATT disciplines for processed products with regard to export subsidies. According to Article XVI, export subsidies are not allowed for processed products, but some countries, in particular the EC, make regular and heavy use of export subsidies for processed agricultural products.

It is possible to conclude that, in negotiating stronger rules for GATT, governments must continue to remain sensitive about the different problems faced by developing countries in their agricultural sector, in particular, by food importing countries. In this area the essential goal was always to achieve a fair and market oriented trading system.

***(8) Effective preferential treatment to exports from third world.***

Preferential treatment is considered an essential element that could generate agricultural exports from developing countries. In practice, certain countries who have greater access to industrial countries markets, or share particular political ties, are able to receive more preferential treatments than others. As an example, ACP countries have had duty-free access to the EC market, within a quota, for many of their agricultural exports.

Since its introduction in 1971, the EC's preferential scheme has been extended considerably, especially for processed agricultural commodities. For example, by 1990, more than 400 agricultural products qualified for preferences, and around 100 items are imported completely free of duty. In addition the EC granted the poorest developing countries complete freedom from duty on about 700 farm products. In 1985 farm products exported from developing countries covered by the scheme were worth about ECU 2.3 billion.<sup>35</sup>

In the study prepared by the joint UNCTAD/UNDP and World Institute for Development Economics Research,<sup>36</sup> three practical methods for the application of preferential treatment were considered:

- (a) The beneficiary has a comparative advantage in the preferred product, so that total exports exceed the quota and the excess has to be sold at the world price. In this case, the only benefit of preferential treatment is a transfer of tariff revenue on quota exports.
- (b) The beneficiary does not have a comparative advantage in the preferred product but is nevertheless able to fill the quota allocation. Consequently, neither small variations in the world price nor variations in the support price affect production...
- (c) The beneficiary does not have a comparative advantage in the preferred product and is unable to fill its quota allocation. In this case, the relevant supply price for the preferred supplier is identical to the supply price received by domestic producers in the preferred market.<sup>37</sup>

As concluded in Chapter Four, trade preferences should have a permanent rather



than a temporary time scale for application. They must have wider product coverage of export interest to developing countries, and they should not be abolished arbitrarily by industrial countries so as not to hamper all efforts and investments mobilized for production of products (as was explained in Argentinean cattle case for export to EC).<sup>38</sup> In the process of differential and more favourable treatment the critically important role of agricultural trade in generating incomes and development should not be ignored. The reform programme on agriculture should be framed in a such a way as to enable developing countries to expand and develop their agricultural exports. This implies, for example, that in the area of domestic support and border protection, they should be able to retain the necessary flexibility to continue with, or to institute, public programmes to develop their agricultural sectors.

In addition, in order to raise export earnings, their market access opportunities need to be significantly enlarged. This requires greater and /or accelerated liberalization of access to the markets of industrial countries for products of export interest to developing countries (including both raw and processed non-traditional tropical products,). Finally, measures to deal with the possible effects of the industrial countries reform programme on net food-importing developing countries will also need to be adopted, including financial assistance, food aid and improved market access to generate additional foreign exchange earnings.

### ***(9) Stronger commitments by industrial countries.***

Considering the fact that the 24 high income countries account for 80% of world imports and 88% of world exports,<sup>39</sup> it leaves little room for developing countries to grow, unless industrial countries make genuine commitments to change this pattern in favour of developing countries. 88% of world exports means the rest of the world that

comprises (of) more than 150 countries have the remaining share of 12% of world exports, it means an average share of 0/08 for each developing country.

Despite many proposals and demands in the negotiating rounds, especially in the course of the UR for industrial countries to reduce their internal support and trade barriers to products of priority export interest to developing countries, there are still many obstacles including tariff barriers and non-tariff barriers to their exported products.

The industrial countries' commitments in favour of developing countries should be reflected in their individual schedules of tariff concessions by giving better access opportunities on an accelerated basis. Such an approach should also grant tangible compensation for higher costs to the net food-importing developing countries. This is because, during the reform programmes of industrial countries, most of the least-developed and net food-importing developing countries may experience negative effects with respect to supplies of their food imports. This would especially be the case when the level of export subsidy in industrial countries fell, since any decrease in export subsidy leads to an increase of overall prices.

In this respect Egypt, Jamaica, Mexico, Morocco, and Peru have proposed a formula-cut approach to market access, incorporating factors for tariff harmonisation, with the objective of having zero or low tariffs in industrial country markets. They also have asked that preferences be improved. Internal consumption and excise taxes on products of export interest to developing countries should be eliminated by industrial countries within an agreed time frame.

In order to overcome these negative effects, a special Declaration sets out certain objectives by industrial countries, including the provision of food aid.<sup>40</sup> The provision of basic foodstuffs takes different forms such as the full grants for foodstuffs and aid for agricultural development. The latter method could be viewed as a better way of helping

developing countries since it has many advantages in comparison to food aid. The Declaration also refers to the possibility of assistance from the international monetary agencies with respect to the short-term financial assistance for food imports of developing countries.

#### **(10) Technical assistance for developing countries**

In the course of this thesis, especially in the discussions of the TR, it was shown that one of the main difficulties for developing countries is their lack of technical knowledge. This is why wider exchange of information and the establishment of an *International Agriculture Consultative Council* was suggested as a practical solution by the agricultural committee of that Round. A broad consensus and improved level of international co-operation in technical issues affecting agricultural trade policies seems very necessary.<sup>41</sup>

Technical assistance may apply to a wide range of issues relevant to developing countries' development process. It may be divided into three distinctive categories 1)- General efforts regarding infrastructure and overall welfare and change of life style in developing countries such as building of roads, dams and irrigation channels, improving the rural education systems, that need substantial national or international investments. Since a major agricultural problem facing developing countries throughout the world is the inadequate supply of water for irrigation.<sup>42</sup> Technical assistance in this area is of particular importance. 2)- Technical assistance in production that have different forms such as establishing the national research units for seed and plant selection. Choosing the best products of national and export interest to developing countries by considering geographic and environmental potentials and indigenous knowledge. 3)-Technical assistance in trade promotion: This may starts from research on the potential markets at the regional and international level. Technical assistance in processing techniques, such

as suitable packaging, presentation quality, trade marks, labelling, and advertising facilities<sup>43</sup> as practical ways for such technical assistance to developing countries.

### **(11) More effective dispute settlement system**

As mentioned before, the GATT is unique among international trade arrangements because other agreements may contain legal rights and obligations but they do not apply to trade generally. Other systems such as UNCTAD and OECD are general in nature but contain no legally binding clauses for ensuring enforcement of their decisions.

Despite substantial developments in the GATT dispute settlement procedure, its panel procedures and reports are quite different from procedures which exist in many national courts, even if the arguments used by panels in reaching their conclusions have shown legal characteristics and quality.<sup>44</sup>

Although trade disputes should be resolved through trade negotiations based on agreed rules and acceptable norms of international trade, political issues have recently dominated many negotiating outcomes and have interfered with the panel procedures.<sup>45</sup> In such a situation, those who have political power have the upper hand. In recent years industrial countries are realising their political ambitions through *either 'economic sanctions' or 'trade concessions'*, or by using *human rights* as a political instrument, not against all political parties or countries, but against a few selected countries. The depoliticization of international trade decisions, particularly in the GATT system, is of vital importance, especially in favour of developing countries.

It is possible to conclude that dispute settlement, as originally provided in GATT, was largely a part of the process of negotiation. The institutionalisation of the panel system has not changed the essential nature of the machinery. In addition, the contracting parties recognize that dispute settlement is supposed to preserve their rights and obligations. It is also considered as one of the practical instruments for clarification of

existing provisions and lastly a central element in providing security and predictability to the present multilateral trading system.

The proposed WTO has a strong structure in addition to carrying out all commitments negotiated as the results of UR in the area of dispute settlement. These tasks will be done by the Dispute Settlement Body that will have the sole authority to establish panels, adopt panel and appellate reports, maintain surveillance of implementation of rulings and recommendations, and authorize retaliatory measures in cases of non-implementation of those recommendations. This compares favourably to the present dispute settlement system that is fragmented between the GATT Council and different GATT Committees.<sup>46</sup>

### ***(12) More active participation in the World Trade Organization.***

The World Trade Organization, suggested in the course of UR negotiations by the EC and Canada is based on the model described by John H. Jackson<sup>47</sup>. He indicated that the WTO would not be a substitute for the GATT, but rather an institutional reinforcement for it. On the base of that proposal WTO would not involve substantive trade obligations; rather it would deal with the legal issues involved in restructuring the GATT system into a membership organization, strengthening the secretariat, removing the provisional character of some obligations under the GATT, and various administrative reforms.<sup>48</sup>

Although what GATT or WTO will tackle in the future remains to be decided by the contracting parties, a global organization of this magnitude is quite different from a general agreement such as GATT. In an institutional framework it could have more commitment towards its members in comparison to a general agreement that follow the desires of its signatories. What is vital for developing countries is for them to sit together to evaluate the past disadvantages and negative results in order to design a

common policy attitude for the future. It is very unlikely that more than 95 developing countries in the GATT system would not have some impact in the WTO. There are many new issues to be considered. Some developing countries hoped that under the classical GATT framework a new round may be created to consider all their trading problems. On the question of initiating such a new round, Sutherland, the GATT Director General, believes that:

that is very unlikely because it was too large and too interdependent to be decided. I think we will probably look at things issue by issue in the future, rather than in such a wide and interdependent way, but I may be proved wrong.<sup>49</sup>

The proposed WTO has a huge task to tackle developing countries outstanding problems. The question is whether it will consider the reality of developing countries interests, or whether they should seek for a better platform to forward their concerns about agricultural, raw materials or tropical trade. Against that presumption one of the first signs of the continuation of big players role in GATT policies, could be found in the proposal for the WTO organization, since it requires the establishment of subsidiary bodies on certain sectors of particular interest to industrial countries such as, Goods Council, a Service Council and a TRIPs Council. It is a sign of giving more weight to these sectors rather than emphasising sectors of interest to developing countries, such as agriculture, textiles, tropical products etc.. The third world countries hope that the new organisation does not change into a '*rich mans club*' as did its predecessor.

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## II. FINAL CONCLUSIONS

Despite all the difficulties facing the international trading system, after the eight rounds of negotiations some tariff rates were slashed by more than 80%. As a result of this international collaboration, world trade has expanded from just \$60 billion in 1950<sup>50</sup> to nearly \$4.5 trillion today. In its past 46 years history, the GATT functioned as the principle international body concerned with negotiating the reduction of trade barriers and with international trade relations. GATT is thus both a code of rules and a forum in which contracting parties can discuss and overcome their trade problems and negotiate to enlarge world trading opportunities. The eightfold growth in the volume of international trade since the Second World War has provided continuing evidence of GATT's relative success in this double role.

The GATT endeavours to bring '*law and order*' to a trading world where political power, economic strength and international diplomacy prevail. The GATT does not ignore relative economic and political strengths but provides a basis for all countries, large or small, to trade with each other without being subject to the laws of the jungle.<sup>51</sup> Trade in agricultural products is considered as one of the central issues related to development objectives. The main reason is that agricultural commodities are predominant products in most developing countries and any affirmative change in overall trading patterns would give them a substantial trading advantage, particularly because of the heavy dependence of these countries on the export of one or more primary agricultural commodities. A fundamental change in developing countries' patterns of life requires greater efforts to be made to resolve their serious problems which will be referred later.

One of the principal obligations of the Havana Charter was the call for full participation of developing countries in the system.<sup>52</sup> Such participation is useless unless it provides them with an opportunity to be involved in many decision making authorities.

In the present trading system, there is little basis for North-South organized negotiations, since the major trading problems are looked on within a global scale. Moreover, the trade patterns and concerns of developing countries are just as varied as those of industrial countries. Considering current pattern of North- South relations, three practical channels may be considered, a)-Trade relations based on international law, b)- Development co-operation and c)- Aid co-operation.

a)- First, the existing situation based on international economic law, as part of international law, covers regulations relating to the existing world economic order which is generally challenged by the developing countries as one reflecting the pattern of the colonialist time. On its philosophical /jurisprudential aspect, such law follows a positivist view which legitimises the economic status quo.

b)- On the other hand, developing countries put forward the concept of international law of development. This law sees development as the only way out of the unjust world economic order. As its philosophical/ jurisprudential basis, this law follows a policy-oriented approach which views the world as a unit comprised of diverse components some of which are weaker than others in need of a systematic protection.

Considering a new international economic order is needed to safeguard the interests of the weak as one of its main objectives. International law of development is the law which would cover and regulate various aspects of economic intercourse in the context of this new international economic order. This system been trying to put North-South relations on a legal and durable framework.

c)- The third approach is the aid co-operation that some industrial countries are



practising it in the form of food aid that is not functioning on a secure legal basis. Many political and economic considerations may be involved and many developing countries are not in agreement with such an approach.

There were many attempts in the past to create an institutional framework or regulatory device to assist developing countries. Although GATT is one of the vehicles for carrying out this mission, it should not be forgotten that GATT was mainly designed for mutual trade relations between equal partners. The principles of MFN and reciprocity are the best signs of such claim. GATT was not intended to consider who will lose and who will gain in its mutual trade exchanges. For example, it seemed not to react to the EC opening its market to Central American banana products although such action will automatically destroy the African banana producers economy. This is why the GATT founders tried to adjust the system towards developing countries by granting differential treatment to them and adding Part IV. There is an element of moral duty in international economic relations, but to what extent the GATT should consider this as a principle is a question open to debate.

GATT's rules for conducting the trade relations between the contracting parties are based on contractual rights and obligations which have been accepted, voluntarily, to serve mutual interests. GATT is also a place where countries negotiate and work together for the reduction of trade barriers in search of its constant and fundamental aim for further liberalization of world trade. Its main aim has been always to remove the obstacles to trade. Bearing in mind that the GATT is a fragile and complex instrument, it must be used and strengthened to operate effectively. But in the 1980s, its effectiveness was placed in doubt, partly due to widespread difficulties in agricultural trade.

When the GATT rules were originally drafted in the late 1940s they were

intended to apply to trade in agricultural and industrial products alike. Things have worked out differently however, agriculture has been virtually excluded from the broad sweep of trade liberalization and insulated from the normal disciplines of market forces and international competition.

The pattern of agricultural trade policies emerging across the world at the end of this century exhibits distinctive features. Nearly all of the industrial countries hold resources in agriculture behind a panoply of protectionist barriers that insulate this sector from international competition. The first question relevant to the thesis to be answered is, therefore, whether the system is applicable to agricultural trade. There are many different answers to this; Dr. J. MacMahon believes that:

"The GATT work, in areas of agricultural trade reflects the legacy of misconception."<sup>53</sup>

He also believes that agriculture by its very nature is protectionist. The protectionist policies of industrial countries and the waiver for agricultural programme granted to the US in 1955 is evidence of this protectionist nature. It may be concluded that the inclusion of the agriculture sector into the GATT agenda, is a step toward the liberalization of agricultural trade. Consequently GATT attempts to deal with protectionist nature of agriculture, enshrined as it is in domestic agricultural programmes, and have been singularly unsuccessful.

#### ***A-THE ADEQUACY OF MEASURES RELATED TO DEVELOPING COUNTRIES' AGRICULTURAL TRADE***

GATT claims that the economic growth of the developing countries, particularly the least-developed countries, is its prime objective and commitment. The question is, has the system managed to reach that objective ?

One of the instruments to reach this goal was the preferential tariff preferences that have already been discussed. Most of these tariffs have a minimal effect on the

developing countries, since they are selective, arbitrary, and have a time limit. They are often harmless to the economy of donor countries. In other words, the developing countries have allowed themselves to be distracted by the idea of preferences, seeing them as a means of offsetting handicaps created by trade restrictions and distortions in access to industrial countries markets.

One of the main aims of preferential treatment is to encourage infant industries in developing countries to flourish, but not all developing countries have the capability of setting up industries to promote their exports. Developing countries tend to support their urban-industrial sector at the expense of their primary processing industries. This creates a heavy distortion in world markets for agricultural temperate- zone products. Exports from the third world usually face competition from rich countries who restrict access to their domestic markets and dump their surpluses on the world market. This is a common story in many newly industrialised countries who tend to imitate this pattern by raising barriers to agricultural trade as the development of their industrial sectors gains momentum.

In summary the allocation of preferences affects developing countries economies as regards to:

- a)- measures to influence exports and imports. The country concerned enjoys a relatively large degree of freedom. To the extent, however small, that the measures it takes can reasonably be linked to its development policy, it has considerable levy in regard to customs matters, taxation, quantitative restrictions or other measures.
- b)- measures that the country concerned can expect from others, it is entitled to expect that, on their territory, developing countries will accord preferential treatment to its exports;
- c)- lastly, if any developing country wants to establish particularly close economic co-

operation with other countries, it can lawfully conclude simple preferential agreements without having to encumber itself with free-trade area or customs union arrangements.<sup>54</sup>

Some still believe that special and differential treatment of developing countries has had only a marginal effect on their economic performance. A glance at the rapidly growing economies of newly industrialized countries such as the Republic of Korea and Turkey shows that there is little evidence that special and differential treatment has played much of a role in their strong trade performance.

Agricultural negotiations in the UR covered commodities whose exports are dominated by industrial countries. The UR negotiations also excluded tropical products whose exports come principally from third world countries. Regardless of whether the separate treatment of developing countries has benefited them or not, one clear effect of limiting developing countries obligations in the GATT has been to limit their influence in negotiations.

One of the motivations for reforming the agricultural trading system under the GATT was the increased cost burden on the industrialized countries over the last decade to support their agricultural sectors. They have already taken measures to reduce the costs. The real challenge ahead is to ensure industrialized countries do not continue to reduce their costs in a manner detrimental to developing countries. The hope is that the reductions in support of the agricultural sector may be a vehicle for strengthening agricultural productivity and trading opportunities for developing countries, otherwise the results are contrary to developing countries interests in the system.

### ***B- PATTERNS OF AGRICULTURAL POLICIES***

In recent years the rise of protectionism in the agricultural sector has created special circumstances. Industrial countries have used more support for their agricultural sector in comparison to developing countries. Importers of agricultural commodities also

tend to be more protectionist than the exporters. Developing countries who are exporters of agricultural products often tax their agricultural sector in two ways, directly by interventions within the sector and indirectly by protecting their urban industrial sectors. The level of protection is positively correlated with the level of per capita income. In this situation, the newly industrial countries tend to shift from taxing to protecting their farming populations.

As stated before there is conflict of interest in the GATT between two distinct groups, as developing countries who are exporters of primary products and protectionist industrial countries, and among the latter group themselves. In recent decades there was a sharp deterioration of the trade balance in many food importing developing countries. At the same time, food surpluses have increased steadily in developing countries. This is a clear sign of a larger scale structural difference between the North and South. In Africa, as a result of famine, a child starves to death every four seconds. Meanwhile, the Eurocrats in Brussels insist on the destruction of 600,000 tonnes of fruit, grain and vegetables every year -to keep their prices high.<sup>55</sup> It is evidence of two extremely different agricultural policies.

It should be realised that these policies are not the sole explanation for such an outcome, but they have undoubtedly contributed to them as policies in the North have depressed world prices and policies in the South have further decreased producer incentives. In addition the agricultural trade liberalisation in the North causes general price increases in many products such as cereals. Such increase in the world price of cereals and food commodities will directly affect the developing countries. This is why the net food-importing states will especially suffer from agricultural policy reforms in industrial countries.

***C- STATE TRADING UNDER GATT***

As mentioned earlier, state trading practices, especially in the agricultural sector among the developing countries, have recently become a controversial issue. The industrial countries have demanded a free function of market forces and competition in commodity markets, whereas in many eastern block and developing countries the involvement of government in this area is quite apparent. The state trading rules in the GATT system basically have two distinctive elements: a)- that state-trading entities operate on a nondiscriminatory basis, governed only by commercial considerations, b)- that entities with import monopolies negotiate a limit on the level of protection applied in the form of price mark-up.

In practical terms, neither of these provisions has been enforced, so that states using such entities have essentially been free to operate without regard to rules normally applied in the form of a price mark-up.

In addition, the GATT system interprets such enterprises in terms of exclusive and special privileges. It requires the parties to apply the principle of non-discrimination, which is interpreted as meaning that decisions in relation to commercial transactions by state trading enterprises are required to be made strictly on commercial considerations.<sup>56</sup> In contrast, special measures for developing countries in respect of their development objectives in establishing the new industries are subject to investigation and approval.<sup>57</sup> Not surprisingly, these cumbersome provisions have been very sparingly used.<sup>58</sup>

***D- GATT AND THE BALANCE OF POWER***

In the whole history and evolution of the GATT, the industrial countries have been the dominant power, whereas despite having a substantial majority in the system the developing countries have no choice except to follow what has been prepared or dictated for them. In other words they have only a marginal role in the decision making

authority of the GATT system. In economic terms, they are the substantial losers in the world market share as a result of the difficulty in balance of power and their marginal role. In addition there are many barriers to exports of the products of their interest such as cereals, sugar, tropical beverages, spices and vegetables.

In comparison to developing countries, the share of industrialised countries imports of agricultural products shows a general decline in recent decades while developing countries have had an increase in demand on the whole. This means that the overall balance is against developing countries who became more dependent on agricultural imports. On the other hand, international agricultural trade generally continues to be characterized by supply increasing faster than demand, overhanging surpluses and depressed world market prices especially in industrial countries.

The high level of support to agricultural production in industrial countries has been clearly identified as the major cause of these difficulties. Some countries tried to persuade the international community that export subsidies are not a major source of difficulty. It is true that the present problems were not created by a single source, but they resulted from a combination of distorting policies in industrial countries, such as deficiency payments and export enhancement programme in the US and import restrictions in Japan. It is possible to conclude that '*all industrialised countries are sinners*' in one way or another.

In relations with the developing world, the industrial countries policies are a matter of deep consideration. In recent years, in addition to bilateral and regional deals, single commodity approaches became popular, but the best solution is a multi-product and multi-country approach for lowering the level of support and production.

For example, one of the main principles of the Lome' Conventions is to allow the ACP products to enter into the EC market free of custom duties and other charges

with equivalent effect and quantitative restrictions.<sup>59</sup>

The assumption is that in any deal between industrial and developing countries each side is supposed to get its fair share. Do the Lomé arrangements contain the same economic colonialism which derives from the Treaty of Rome? Doubts arise when we realise that the Tanzanian farmers are receiving only 5% of the selling price for their instant coffee that is exported for English consumers.<sup>60</sup> This is a sad story that exists in similar agricultural and raw commodities exports of the developing world. How is it possible to call this a fair and just trading system? Despite all those imaginative objectives in trade agreements, the developing countries should persist in looking for a fair and mutual advantage in all multilateral and bilateral treaties.

In the industrial communities, such as the EC, the establishment of the CAP has secured a good standard of life for the farming population. The main reason is that in practice all member states individually or collectively have applied the CAP rules by giving a fair protection to their farming communities. The same pattern for protection exists in other industrial countries. In comparison the third world lacks such support for its farmers. Despite many written rules and conventions calling for a better protection of rural communities in developing countries, their farmers are substantially ignored and left alone, vulnerable to different negative forces and factors of their harsh life styles.

Such pressure forced the farmers in the developing world to abandon their farming villages and move to the big cities for a better lifestyle. For example for many years in the pre-revolution time in Iran, I personally witnessed a mass immigration of farmers from villages to big cities, causing more chaos and difficulties for the government. The quick expansion of many cities that are mere agricultural product consumers with numerous economic and social problems is another phenomena for consideration. Could we blame the farmers who usually received five time less income



(wages) than a simple and unskilled employee in the capital city ? I have seen that many of those who have moved to the cities not only secured their minimum standard of life, but guaranteed a better life and education for their next generation, whereas those who remained in the villages had a backward trend in their life. This is a common feature in many developing countries.

### ***E- THE CONSTITUTION OF AN OPTIMAL PERSPECTIVE***

In an optimal and desirable trading framework the existing balance should be changed towards agricultural trade promotion as well as guaranteeing a fair standard of life for rural agricultural communities in the third world. No participant should be richer at the expense of others. When industrial countries speak about environmental protection and equality of their farmers by other segments of the society, in developing countries, farmers are not only thinking of being equal, but falling into a deep grave leading to a total devastation.

The GATT and other parallel international organisations, especially UN bodies dealing with developing countries, should seek a proper and practical solution to agricultural trade problems of developing countries, since this is the major source of export earnings in many of them.

The sharp fall of the oil price in the 1980s' and recent years after the boom of the 1970s' is the best evidence of a real and sad fact that the third world could no longer rely on a single commodity export, even if such a commodity became as important as oil. The reference to oil is made since among many single national products in the developing countries, oil is considered to have a distinctive character as a major source of exchange earnings for many developing countries. It means that in the new world of competitiveness, sooner or later the balance may change against commodity exporters.<sup>61</sup>

To overcome such unpleasant experiences the developing countries should multiply their sources of income and export earnings through other commodities, setting up industries in relation to their development needs and using new technologies for processing their raw materials that usually create jobs and income. In addition recourse to other sectors such as service and investment (specially by oil producing countries) are other supplementary sources of income for developing countries.

Moreover excessive support policies, especially in industrial countries, accompanied by fast growing technological advantages, has created an increased distortion of free competition in world markets; and severely damaged the situation of many developing countries.

In order to solve the problem, all countries should bear some responsibilities in the present situation. An overall effort is needed to halt the deterioration. All hopes were focused on the UR final package of measures to create a fair set of rules to tackle the problems, but in practice the UR does not seem to have reached such objectives. The UR negotiations represented the most important international basis for bringing about a better balance in the world trade in agricultural products. It is therefore essential, if practical rules are to be achieved, to approach' the subject in a realistic spirit

It is too early to speculate on the overall practical results of the UR, but even at this stage, many developing counties, especially the net food importing countries, announced their dissatisfaction with the FAA. At the same time, given the scope of the problems, a concerted reform of agricultural policies will be implemented in a balanced manner to tackle them. The main pillars of reform are based on the following criteria:

- 1)- The long-term objective is to allow markets to influence, by way of a progressive and concerted reduction of agricultural support, as well as by all other appropriate means, the orientation of agricultural production; this is a hope for developing countries to bring a better allocation of resources which will benefit consumers, and the economy

in general.

2)- As indicated before, in practice any progressive correction of policies to achieve the long-term objective will require a suitable period of time, plus the genuine intention and commitment of the parties for making the changes.

3)- In such circumstances there is a need for developing countries to receive special treatment in the GATT system. But such special treatment is of limited value. Far greater emphasis should be placed on permitting and encouraging the developing countries to take advantage of their competitive strengths and on integrating them more fully into the trading system.<sup>62</sup>

#### ***F- THE EFFECT OF INDUSTRIALISED COUNTRIES POLICIES ON DEVELOPING COUNTRIES***

The prime results of reduction or elimination of agricultural support and production in the industrial countries could have a dynamic impact on the development of agricultural production in developing countries and could provide certain agricultural exporting countries with an opportunity to expand foreign exchange earnings from their agricultural exports in the long term. However, in the short-to-medium term, because of reduced production in industrial countries, world food prices will consequently rise. While such a rise may be beneficial in the long run, in the short run it would bring hardship to developing countries that are net importers of food, particularly to the poorer sections of their population.

In industrial countries, agricultural policies based on heavy government interference with market mechanisms that are now viewed as a serious problem. Consequently huge budget costs, surpluses, environmental degradation and the unsatisfactory levels and distribution of farm incomes have strengthened opposition to those policies. At the same time, trade conflicts have multiplied as evidenced by the increasing number of complaints processed by the GATT panels, and by the export

subsidy war in the grain trade between industrial countries who are exporters of cereals.

Having higher prices would undoubtedly improve the profitability of the farming sector in some countries, and consequently reduce government expenditures on agricultural income support programmes in others. On the other hand more subsidies in the long run could also attract investment for the production of foodstuffs in food deficit developing countries, provided that the benefits of the higher prices are passed on to the producers and are complemented by institutional and infrastructural improvements. In the short run, however, high food prices would continue to increase pressure on the balance of payments of many food-deficit countries, with serious consequences for the well-being of the poor, whose food intake is already insufficient.

#### ***G- DIFFERENTIAL TREATMENT AND RECIPROCITY***

As discussed in the thesis, the rule according to which preferences are extended in favour of developing countries has not constituted an unlawful exception to MFN treatment. It is already accepted in the context of customary international law. In the light of this point it is questionable that industrial countries are reluctant to enter into negotiation with developing countries. One may wonder whether their objection is because the developing countries have been excluded from reciprocity in GATT negotiations or, if under such exclusion they are not able to claim reciprocity in relation to developing countries. It may be argued in favour of the principle of reciprocity that it is not necessarily considered as constituting an obstacle to preferential practices.

Should one then conclude that the lack of interest from industrial countries to promote their economic and trade relations with developing countries is not so much due to acceptable legal reasoning as to the consideration of their own specific economic and trade interests ? This however does not promote the interests of developing countries. It may be concluded that the reciprocity principle with its accompanying assumption of

an equal bargaining position of the participants and more or less equal economic standard, is unsuited for a general organization such as GATT. It has been replaced, temporarily at least, in relation to developing countries.<sup>63</sup>

Developing countries exporting their commodities to industrial markets are facing different tariff and non-tariff barriers. The GATT needs to improve measures for tackling such counter trade practices. Many developing countries still have not been able to secure access to industrial markets and in return they blame the industrial countries for the disposal of manufactured products in their markets. This situation raises the question of the infringement of the principle of non-discrimination, since such a system offers benefits to specific customers, and very limited opportunities for others to promote their external trade.<sup>64</sup>

#### ***H- WHY WERE AGRICULTURAL TRADE ISSUES NEGLECTED ?***

One of the striking reasons for ignoring trade in agricultural products in previous rounds was primarily because at the inception of the GATT a number of countries made it a pre-condition for their accession to the Agreement that special waivers and protocols be granted to allow them to accord special treatment to their agricultural commodities, thus agriculture was virtually taken out of the negotiations. Although from the outset, the liberalization of agricultural trade was at the top of the agenda of the multilateral trade negotiations, many efforts for a fundamental change of agricultural provisions were hampered by industrial countries. Despite a better negotiating position for developing countries in the UR, they still had a marginal role in the negotiating process.

Many developing countries are likely to suffer from net foreign exchange and welfare losses on account of higher world prices for basic foodstuffs as a result of UR agricultural reform. This suggests the need for accompanying measures including trade, finance or aid measures, to 'compensate' such countries and thus provide them a balanced outcome of the UR, supportive of their economic and social development.

***I- THE EFFECTS OF LIBERALISATION OF AGRICULTURAL TRADE***

As indicated before, for many developing countries which are not importers of agricultural products, the extent of net gains or losses will depend upon the impact of trade liberalization in products of export interest to them. For many, exports are concentrated notably on tropical products, sugar, horticultural, and certain natural resource-based products. For these products, with the exception of sugar, econometric studies indicate that trade liberalization is likely to lead to a substantial increase in world consumption. There will be a possible increase, at least for a transitional period, in world prices of the main foodstuffs such as grains, livestock products and edible oils. Consequently for net food-importing countries there are likely to be difficulties, at least in the short run, as a result of a substantial increase in the cost of food imports.

These difficulties could be added to increased pressure on the balance of payments of many food-deficit countries, with serious consequences for their development process in general and debt repayment capacity in particular, as well as consideration of well being of the economically poor nations, whose food intake is already inadequate. As far as the final results of UR negotiations on liberalization of agricultural trade is concerned, except substantial export gains by some developing countries such as Argentina, Brazil, and Thailand, (particularly in rice and sugar products),<sup>65</sup> the majority of them are potential losers. It is possible to say that the UR created better opportunities for some agricultural exporting countries. In such a situation it is vital to adopt accompanying measures or special mechanisms to offset the negative effects of the trade liberalization process on these countries as follow:

1)- One of the major problems of developing countries is the instability of their markets resulting from their unstable level of production; they need to achieve stable conditions in commodity supply and trade.

- 2)- The improvement of a sustained and real income through increased export earnings, and to protect them from fluctuations in export earnings, especially from commodities;
- 3)- To improve market access and reliability of supply for their primary and processed products.
- 4)-To diversify their production including the food sector, and to expand processing of primary products with a view to promote the processing industries.
- 5)- To encourage research and development of national products competing with other synthetics products, and the harmonisation of all research efforts.
- 6)- To improve market structures in the field of agricultural and raw materials.
- 7)- To improve marketing , distribution and transport systems by taking steps forward for more participation in these activities to support their agricultural economies.

It should be realised that many such efforts are substantially dependent either on financial capacity of developing countries or more generous contributions by industrial countries in creating a better environment.

### ***J- CONSIDERATION OF DEVELOPING COUNTRIES' INTERESTS***

Sustainable agricultural development for developing countries has become a crucial issue of agricultural and resource management. Agriculture is an extremely important engine of economic growth of different countries. It provides not only food, fibre, and fuel, but also employment and income, as well as materials, capital, and additional resources necessary for running the development of other sectors. However, the present and future capabilities of these countries to provide adequate livelihood and food security is threatened by lack of management, rapid population growth and degraded natural resources.

As indicated before the assumption is as the result of application of UR decisions

certain developing countries who are agricultural exporters will gain from the outcome and this will create a satisfactory balance comparing with those developing countries who face losses in their trade. I believe that since industrial countries are the main competitors in world agricultural exports, and there is little room for developing countries to compete, but even if there is a general rise of export earning for farm producers, that may help developing countries' farmers. Owing to the lack of competitiveness, market access opportunities and other relevant resources many developing countries are not able to secure any gains as predicted.

Finally it is clear that the GATT system is not able to ignore the interests of developing countries who count for more than 75% of the total contracting parties, including 36 African countries who were practically out of the game as the result of their previous comparative gains from Lomé Conventions. Consequently full attention should be given to the special problems facing the least developed countries.

The lack of effective multilateral disciplines over agricultural import restrictions and export subsidies has largely favoured the industrial countries. Their support policies have had a distorting impact on world trade. If developing countries interests are going to be considered, there should be effective rules and disciplines over these practices that offer them improved market opportunities. The industrial countries should put concessions and trade relations with developing countries on a contractual and regulated manner, rather than loose and temporary preferences that could easily be changed or ignored.

The developing countries may ask, if they are the majority of the GATT contracting parties, why, since the beginning, the main players have been the industrial countries. Even many selected places for holding the negotiating rounds is the indication of the dominance of multilateral negotiations by industrial countries that were holding the sessions under the names of industrial countries cities or individual names of their



peoples (Geneva, Annecy, Dillon, Kennedy, Tokyo !!) except for UR. The majority of Secretary Generals, high rank officials and even staff come from industrial nations. Is this a simple indication of the dominant position of industrial countries in the decision making authority ? Even the UR period was mainly spent in to tackling the major disputes of industrial countries rather than taking substantial steps toward the solution of developing countries problems.

### ***K- THE ESTABLISHMENT OF NATIONAL ACTION COMMITTEES***

In order to cope with the consequences that are supposed to lead to an overall increase in the production of food commodities and in order to ease the pain it was agreed that the reform programmes were to be phased in generally over six years to cope with the price increases as they occur. It gives consumers and farmers in the importing countries time to adjust. This adjustment period is crucial to developing countries economies. In the long term it brings heavy consequences for the third world, especially major food importing countries, to set up *National Action Committees* with the full legislative authority to deal with the crisis. It is not possible to sit and wait until the effects have occurred. As indicated in the first chapter of the thesis, any adjustment programme in the agricultural sector is subject to a long process in rural agricultural societies. For this purpose developing countries should set up such National Action Committees as early as possible to collect all information and available resources in order to find the best solution to such problems. Such action committees are common in many industrial countries for solving their economic crises.

Depending on the nature of imports and the possibilities of substituting them, developing countries have many options such as stimulating production by different ways of farm support, giving technical assistance to farmers and attracting national and international investment to increase their food production.

***L- MOVES TOWARDS SELF SUFFICIENCY***

In this study there have been references to the positive moves by developing countries towards self sufficiency, economic independence and having more say in international trade deals. A good case here is the People's Republic of China that in recent years has had outstanding growth in the production of cotton and grain that led to a sharp fall in demand for imports; this has resulted a reduction of about \$1.5 billion worth of US exports to China.<sup>66</sup> It is an example of the effect of independent production policies of the developing world that could lead to economic self sufficiency. One of the main challenges for developing countries is to reach self sufficiency in many of their agricultural imports especially in food commodities.

***M- WHY FOOD AID IS NOT A SUITABLE SOLUTION ?***

The third possibility of dealing with the present unjust balance between the North and South was to grant food aid. This was considered as a quick way of helping developing countries to overcome their temporary food shortages and possible malnutrition in different parts of the world, to facilitate the liberalization of agricultural trade. The notion of food aid has different economic, political, financial and moral dimensions, but it is based on a moral obligation that derives from the duty of industrially advanced nations to share their gains with the others, the gains which mostly came from the losses or bargaining disadvantages of developing countries.

The disadvantages are mainly because the GATT system is relied on to govern relations between economically healthy countries. When the majority of its contracting parties are developing countries with unhealthy economies they are not able to become equal partners and benefit from the system. It is questionable if aid policy is a suitable solution for this global problem or whether such aid has adverse consequences for receiving countries. There are different theories in respect of the effectiveness of food

aid as an instrument for helping the developing countries. It should be realised that food and other temporary development aids are only '*pain relief*' rather than proper treatment.

The issue of food security and aid policy are mutually related, thus constituting one of the main concerns of both industrial and developing countries. Many industrial countries such as EC and Japan never compromise over their food security, and neither should developing countries.

Food security could be interpreted from two different angles:

1)-The narrow and simple interpretation would be that of food as a commodity for human consumption. As such it must satisfy sanitary and phytosanitary regulations, according to the recognised range of current discussions and rules of international trade negotiations on this issue. The question remains how to assure an adequate level of food aid, especially for food-deficit developing countries, to meet the food needs of their people, and at the same time prevent circumvention of the new disciplines on export subsidies.<sup>67</sup>

2)-The other important aspect of food security needs more specification.

Foodstuffs are considered to be a range of commodities connected to economic security, and as such, sometimes occupy a major place in the political scene. One of the main objectives of economic development is to ensure adequate domestic production of certain basic or strategic food commodities. Negotiations on financial buffering may account for the possible rises in food prices in countries accustomed to importing low-cost and subsidised food from industrialised countries. The important issue for developing countries regarding a successful outcome of the UR is that they are sensitive to any appearance that their food security has somehow been compromised in the multilateral negotiations. This issue has received attention in many North South dialogues such as the Lomé Convention in terms of agricultural co-operation and food security in

national regional and inter-regional level. In practice little has been achieved.<sup>68</sup>

According to the World Food Council, the problem of malnutrition is increasing rapidly. It is usually caused by poverty, and its existence represents a heavy cost to many countries through lost productivity and additional health and social expenditures.<sup>69</sup>

In countries where agriculture represents a major part of the economy, food security can be assisted by stimulating growth in that sector. Farm prices should be market-oriented and provide an incentive to encourage economic production. It is believed also that general subsidies to hold down food prices are often expensive and wasteful, although there are circumstances where consumption subsidies directed to certain groups are appropriate.

It should be realised that improving world food security and overcoming malnutrition and famine are related to general economic and political developments. However, the reform of domestic farm policies in line with general trade liberalization may help alleviate these problems.<sup>70</sup>

### ***N- HOPES FOR THE FUTURE***

Referring to previous discussions, the main objectives of the GATT was considered to be as: 1)- raising the standards of living, 2)- ensuring full employment and 3)- a large and steadily growing volume of real income and effective demand, 4)- developing the full use of the world resources and 5)- expanding the production and exchange of goods. The extent of present agricultural provisions of the GATT that are intended to lead to that direction was already discussed. But it may be concluded that, since the system is a fragile, complex instrument it must be used and strengthened to operate effectively. Its effectiveness has been placed in doubt, partly due to the widespread difficulties and diversity of trading interests in the agricultural sector.

Because it is freely accepted by sovereign governments, the GATT's contractual

character is very important. It contains the maximum level of concessions, or constraints on freedom of action, that its contracting parties offered to achieve an orderly system for world trade. The GATT concessions relate in part to tariff reductions, but they also involve the acceptance of disciplines over a range of other policy instruments. Hence it is vital to insist on unconditional preservation of GATT's legal and contractual character to ensure that it provides an effective system of trade rules. As stated before, since the number of developing countries in GATT has increased dramatically in recent decades, the GATT authorities could no longer ignore their importance and interests. The GATT has correspondingly established a particular committee on trade and development<sup>71</sup> to deal with developing countries' problems.

There were some signs of success regarding the Technical Cooperation Programme in UR, in that many delegations from developing countries have expressed their appreciation for the quality of the programme and their gratitude for the technical assistance made available to their countries throughout the negotiations. Furthermore the programme has comprised a wide range of activities in order to respond to the various needs of the developing countries. It has also paid special attention to supporting the trade performance of the least-developed countries in the course of negotiations. In addition, in conjunction with UNCTAD<sup>72</sup> special seminars and papers on agriculture certain other issues relevant to developing countries were conducted. Technical assistance is of vital importance for developing countries, since many of them expertise to deal with the complex issues of the contemporary international trading system.

Despite the huge gap of agricultural trade advantages of industrial countries with developing countries, the ever increasing South-South relations, and the new regional arrangements amongst the developing countries are all signs of positive move by developing countries.

I hope that the results of this study contribute to a better understanding of the role of the GATT in relation to developing countries and their agricultural trade interests. These interests have been subject to varying intensity from Round to Round, and are under consideration by other multilateral parallel attempts such as UNCTAD, FAO, etc. Perhaps the establishment of a permanent institutional framework of that of ITO or WTO, may be capable of promoting the interest of developing countries in a much more systematic and sustained manner in which the developing countries may play a substantive role commensurate to their problems and needs. This could lead to permanent and sustained development.

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4 . Ibid.

5 . For a study of possible consequences of reducing agricultural support and protection see: Anderson K. and R.Tyers, *Liberalising OECD agricultural policies in the Uruguay Round; Effects on trade and welfare*, '*Journal of Agricultural Economics*, 39 (2), (May 1988); K, G. Fischer, K. Frohberg and O. Gulbrandson, *Towards Free Trade in Agriculture*, Amsterdam: Martinus Nijhoff, (1988).

6 . For example the OPEC success in raising oil prices through collective unilateral action has encouraged other developing countries to set up similar agreements or regional groupings to increase their foreign exchange earnings through harmonised exports of agricultural commodities.

7 . See Helleiner G. K. *The New Global Economy and the Developing Countries*. University of Toronto publication, (1985).

8 . See: International Cocoa Organization, in, *Trade and Development Report*, (1991), UNCTAD, P.36.

9 . The 1977 Sugar Agreement (ISA), according to which sugar exports take place on a preferential basis between Cuba and members of CMEA and between countries adhering to Protocol 3 of the Lome' Convention 1975 is a practical example. In that case, one element of the operation of the regulatory mechanism of the ISA was the accumulation of special stocks by exporting countries which could be released to defend the maximum price. Harris S. '*US and EC policy attitudes compared towards the 1977 ISA*' 31 *Journal of Agricultural Economics*, (1980), p.351.

10 . See Denoon D., *The New International Economic Order. A US Response*, New York, (1979).

11 . See more details in: K. R. Khan *The Law and Organization of International Commodity Agreements* Martinus Nijhoff, London, (1982), The International Stock System, Chap.4, P.157.

12 . Trade promotion was also recognized as its main purpose in 1968, when the Centre was recognised as an autonomous organ.

13 . See GATT Document, COM.III/128.at . *BISD (1964), 12 th Supp.*, p.138.

14 . Dr. Khan K. R., '*International Law of Development and the Law of GATT*,' in F.Snyder and P. Slinn (eds.) '*International Law of Development: Comparative Perspectives*,' London, (1988), pp.175-195.

15 . For more information on ITC development programmes could be find in GATT activities; annual report of the work of GATT, in different years. For example in 1988 version.

16 . The Centre is also involved in the development and promotion of a variety of commodities, including cocoa and cocoa products; coffee and coffee products; tea; meat and meat products; spices; vegetable oilseeds, fats and oils; cotton, cotton yarn and grey cloth; hard fibres; jute and jute products; silk and silk products; coconut products; natural rubber products; tropical timber and timber products.

17 . Regarding the technical co-operation activities, the ITC carried out some 127 national, 44 regional and 96 interregional projects in 1988, and two regular trade promotion sessions in 1992. See *GATT activities, annual report of the work of GATT, (1992)*, p. 106.

18 . For a full analysis of STABEX system see; Lome: The New Association: at Lister Marjorie *The European Countries and the Developing World*, The Role of the Lome Convention, University of York publication, (1988).

19 . See, Walley John: *Special and Differential Treatment, Agriculture, and the Developing Countries in the Uruguay Round*, in Nurul Islam: Alberto Valdes, *The GATT and the Developing Countries*. (Sep. 1990), International Food Policy Research Institute, Washington, p.16.

20 . Krugman Paul, *The move toward free trade zones*, in No. 76 *Economic Review*, (Nov-Dec. 91) p. 5(21).

21 . More that twenty regional arrangements have been put into place that many of them do not fulfil the criteria laid down in Article XXIV, but in practice the Contracting Parties have chosen to tolerate them.

22 . For a complete discussion of these regional arrangements see, Baghwati Jagdish, *The World Trading System at Risk*, London, (1991).

23 . Ibid, p.77.

24 . Word Bank estimates cited by Pesquet, Jean-Jacques in *APROMA Bi-monthly Review*, No.31, (March-April 1993).

25 . See, *GATT Activities 1992*.

26 . Until October 1992, the Protocol has been ratified by 15 developing countries. These countries are Bangladesh, Brazil, Chili, Egypt, India, Israel, Republic of Korea, Mexico, Pakistan, Peru, Romania, Tunisia, Turkey, Uruguay and [former] Yugoslavia.

27 . For more information on ITC development programmes see *GATT activities*; in different years, especially 1992, annual report of the work of GATT.

28 . Prestowitz, Clyde V.and Robert W. Jerome, *GATT is not Worth Saving Anyway*, Los Angeles Daily Journal, No. 248 (Tuesday, Dec.13, 1990).

29 . This will help to assure the developing countries domestic production and consequently their food security.

30 . Final Agreement on Agriculture Article 12.

31 . Ibid.

32 . See the text of Mid-Term Uruguay Round negotiations.



33 . Although these rules were discussed under separate negotiating group, but the results should apply to agricultural sector. The US submission of comprehensive long-term agricultural reform, that was tabled in Geneva on October 1989, it contained a proposal for special safeguard mechanisms based on a quantitative approach.

34 . Polouektov and Delgado Sergio, *Steguards: Issues in the Uruguay Round*, in *Papers on Selected Issues*, UNCTAD, New York, (1989), p.45.

35 . 'A Common Agricultural Policy For the 1990s'. Periodical No. 5/1989 European Documentation, Fifth edition. Luxembourg, (1989), p.42.

36 . UNCTAD, *Agricultural Trade Liberalisation in the Uruguay Round: Implications for developing countries*, A joint UNCTAD/ UNDP/ Wider (UNU) study, UN, Geneva. (1990).

37 . Supra No. 36.

38 . Ibid .

39 . Word Bank estimates cited in supra No. 24.

40 . See more in Stevens Christopher 'After the GATT Uruguay Round', Implications for developing countries, *Institute of Development Studies*, IDS Briefing Paper, UK, (April 1994), p.3.

41 . See GATT, Director General, The Tokyo Round of multilateral trade negotiations: GATT, Geneva, (1979).

42 . There are two alternative, but not mutually exclusive, approaches to the water scarcity problem in many developing countries: increasing the capacity of water supply systems where applicable and raising the efficiency of irrigation systems.

43 . Perhaps each individual subject is of considerable importance to developing countries trade performance. For example as the result of labelling trade marks on bananas in some African countries, the market price was raised more than 30% in favour of producers.

44 . In some respects this suggests the adoption of procedures and techniques which are applied as necessary instruments by other systems of resolving disputes by third party adjudication. For more detail see: Edmond McGovern *International Trade Regulation*, GATT, The US and EC, Exeter, (1986), p. 37.

45 . Many examples were already discussed in the thesis among them the delays for conclusion of UR because of US presidential election, the political tension in France as the result of farmers protests to agricultural deals in the UR, and protest of Japanese nationals against the display of US imported rice are among them.

46 . Some of the new changes in the system were referred to in Chapter five. See also table 13, p.307, at the same chapter, for more details.

47 . Schott, Jeffrey J, ed., *Completing the Uruguay Round: A Result-oriented Approach to the GATT Trade Negotiations*. Institute for International Economics Washington DC, (Sept.1990).

48 . See more ibid.

49 . See Interview by Peter Sutherland, GATT Director-General, by Roger De Backer in the *Courier* No.144, (March- April 1994), p.4.

- 50 . See Hills, Carla A. The Los Angeles Daily Journal, Thursday, (Dec.13 ,1990).
- 51 . Tangermann Stefan and William Miner Tangermann Stefan & William Miner, *Negotiating Stronger GATT rules for agricultural trade*, 1989, Discussion papers series, International Policy Council on Agricultural Trade, Cobham Surrey, No.3 Washington, DC. p.1.
- 52 . For example Article XXVIII bis 2(b), of the GATT supports more participation of all countries by stating: "Contracting Parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another."
- 53 . MacMahon Joseph A, *European Trade Policy in Agricultural Products*, Martinus Nijhoff, London (1987).
- 54 . See Trade Policies for a Better Future , The '*Leutwiler Report*', *the GATT and the UR*", Martinus Nijhoff , (1987), Lancaster, UK. p.107.
- 55 . Election Communication, *Scottish Militant Labour*, Glasgow (6th June1994), p.3.
- 56 . McGowan E., The Law of the GATT (19),Chapter 6, cited in Article on: *The law of international Economic Institutions and the principle of universality in the contemporary international legal order* by : Dr. K.R. Khan, p.231.
- 57 . See *ibid* Chapter 9.
- 58 . See *BISD 265/8*, 56,116, 171 (1980), cited *ibid*.
- 59 . Article 2 Lome' 1 and Lome II. Article 130 of Lome' III. See the Courier, No.89.
- 60 . BBC4 radio programme on Thursday 19 August 1993, discussing agricultural problems of African countries.
- 61 . A good example of this among the developing countries rural industries, is the Iranian carpet industry. For many years Persian carpets counted as the best quality in the world and the second source of national revenue. But coming under threat by other developing countries revivals in the region such as Pakistan, Afghanistan, India and China, although they still kept their best quality, they could no longer resist the cheap labour carpet production from these countries. At the same time the competition by machine made substituted carpets even from industrial countries, such as Belgium is another threat. It is similar to finding other sources of energy in industrial countries to replace the oil imports from the developing world.
- 62 . Supra No 54, *Leutwiler Report*, p.44.
- 63 . K.R. Khan, Supra note 56, p.239.
- 64 . Bertrams, R.F. *Counter trade and Third World*, in P. De Waart et al., *International Law and Development* (1988), Chapter 4.4.Cited *ibid* by K.R. Khan p.232.
- 65 . Roningen and Dixit (1989) cited in UNCTAD, *Agricultural Trade Liberalisation in the Uruguay Round: Implications for developing countries*, A joint UNCTAD/ UNDP/WIDER (UNU) study. UN Geneva, (1990). They estimate that comprehensive farm trade liberalization would have a positive net trade balance effect for the US, although trade volume in several product sectors would fall. Overall, the US economy would also experience a large welfare gain from agricultural liberalization.

66 . For a comprehensive review of the situation of American farm trade, Agricultural Outlook, US Department of Agriculture, Washington, (Dec. 1985).

67 . *Trade and Development Report*, UNCTAD, UN, Geneva, (1991), p.166.

68 . Article 26 chapter 1 of the Lomé III reads:  
supporting the ACP states, efforts to increase their degree of self-sufficiency in food, in particular by strengthening the capacity of ACP states to provide their population with sufficient food and ensure a satisfactory level of nutrition." See the Courier, ACP-EC, No, 89, ( Jan- Feb. 1985), p.15.

69 . A recent study by the World Bank examined the issues and options for food security in developing countries. The study estimated that in 1980, depending upon the definitions applied, a minimum of 340 million people and up to 730 million had insufficient food. About two-thirds live in South Asia and 20% in South Saharan Africa. Almost all live in countries with very low average incomes.

70 . *News of the Uruguay Round of Multilateral Trade Negotiations NUR 014 to NUR 023* inclusive (1988), p.45.

71 . Report presented to the Contracting Parties adopted on 13 Dec.1990, (L/6744) See *GATT, BISD Sup. No.37*, Decisions and Reports p. 76.

72 . *ibid* pp. 78-79.

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**US CODE SERVICE:** Lawyers Cooperative Publishing, Library Research, (1992).

**US Department of Agriculture:** Research Service.

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Press, (1990).



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**Title:** Tariff agreements as repeated game strategies (GATT)

**Author:** Becker, Neal Christopher

**Place :** University of Pittsburgh (0178) Degree: PhD Date: 1991, pp: 256

**Source:** DAI-A 52/05, p. 1826, (Nov 1991).

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**Author:** Tang, Simon Lung- Lung

**Place :** University of California, Santa Barbara, Degree: Ph.D Date: 1991 pp: 535

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**Author:** Amiel, Orand.

**Place :** The University of Michigan (0127) Degree: SJD Date: 1991, pp: 450

**Advisor:** Jackson, John h.

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**Author:** Aoued Ahmed

**Advisor:** Burrows N.

**Place :** Glasgow University, Ph.D. Thesis (1992).

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**Author:** Haydar A.,

**Advisor:** Burrows N.

**Place :** Glasgow University, Ph.D thesis (1991).

**Title:** International Trade Agreements and GATT Rules: A Game-Theoretic Approach (game theory, trade agreements).

**Author:** Ludema, Rodney d.

**Place :** Columbia University (0054) Degree: PhD Date: 1990 , pp: 81

**Source:** DAI-A 52/04, p. 1471, (Oct 1991).

**Title: The integration of non-market economy countries into the international trading system (GATT).**

**Author: Chang, Yiwei**

**Place :** Cornell University (0058) **Degree:** JSD **Date:** 1990, pp: 246

**Source:** DAI-A 51/01, p. 274, (Jul 1990).

**Title: China and GATT: Towards Meaningful Participation ? A study of legal issues concerning China's entry into the GATT.**

**Author: Qin, Ya**

**Place :** Harvard University (0084) **Degree:** JD **Date:** 1990

**Source:** ADD X1990

**Title: Levelling the playing field: settling pacific basin, Disputes regarding unfair East Asian trade practices (Unfair trade practices, Japan, China, Taiwan, Singapore, Korea)**

**Author: Ryan, Michael p.**

**Place :** The University of Michigan (0127) **Degree:** PhD **Date:** 1990, pp: 512

**Advisor:** Jacobson, Harold K. **Source:** DAI-A 52/01, p. 291, (Jul 1991).

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**Author: Kwaw, Edmund M. A.**

**Place :** Queen's University at Kingston (Canada) **Degree:** LLM **Date:** 1990 pp:378

**Source:** MAI 30/03, p.554, (Feb 1992).

**Title: International Government Procurement Under GATT and Under the Canada-US And Israel-US, Free Trade Agreements (US).**

**Author: Reich, Arie**

**Place :** University of Toronto (Canada), **Degree:** LLM, **Date:** 1990 pp: 280

**Source:** MAI 30/04, p.1122, (Winter 1992).

**Title: The Welfare Implications of Removing US Import Quotas on Sugar and Dairy Products (United States)**

**Author: Neff, Steven Arthur**

**Place :** Stanford University, **Degree:** PHD **Date:** 1989, pp: 229

**Advisor:** Josling, Timothy E. **Source:** DAI-A 50/04, p. 1024, (Oct 1989).

**Title: Developing Countries and the Uruguay Round: Some Aspects**

**author:** Koekkoek, Kuindert Adriaan  
**Place :** Erasmus Universiteit Rotterdam (The Netherlands)  
**Degree:** Ph.D Date: 1989 pp: 220,  
**Advisor:** Mennes, L.B. M. Source: DAI-A 51/01, p.233, (Jul 1990).

**Title:** Internationally Trade Related Services and Economic Development: The GATT, Trade Policies, and LDCs,

**Author:** Rask, Kolleen Joanne  
**Place :** Yale University Degree: Ph.D Date: 1989 pp: 96  
**Source:** DAI-A 50/11, p. 3702, (May 1990).

**Title:** The Political Economy of East-West Trade Negotiations: East European Countries and The GATT

**Author:** Haus, Leah Alexandra  
**Place :** Brandeis University Degree: Ph.D Date: 1989 pp: 318  
**Source:** DAI-A 50/03, p. 787, (Sep 1989).

**Title:** Safeguard Measures and The International Trade System

**Author:** Salembier, Gerry  
**Place :** Carleton University (Canada) (0040) Degree: MA, Date: 1989 pp: 187  
**Source:** MAI 30/02, p. 245, (Summer 1992).

**Title:** Agriculture Policy and the General Agreement on Tariffs and Trade: Promoting Prosperity Through Free Trade (GATT)

**Author:** Sluka, Laura Marie  
**Place :** CBN University Degree: MA, Date: 1988 pp:77,  
**Advisor:** BOM, Philip C.  
**Source:** MAI 27/02, p.201, (Summer 1989).

**Title:** Agricultural Trade Policy Formation Within the GATT: The Role of The United States and European Community Public Decision Processes

**Author:** Wise, Robert Eugene  
**Place :** Michigan State University, Degree: MS Date: 1988, pp: 259  
**Source:** MAI 27/01, p.40, (Spring 1989).

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**Author:** Chukujama, Francis Nwabunike School:

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Source: DAI-A 50/10, p. 3311, (Apr 1990).

**Title: The Uruguay Round of Multilateral Trade Negotiations: Investigating The Scope For Agreement on Safeguards, Services, and Agriculture**

**Author: Hoekman, Bernard Marco**

**Place :** The University of Michigan Degree: Ph.D Date: 1988, pp: 399

**Advisor:** Stern, Robert M. Source: DAI-A 49/08, p. 2317, (Feb 1989).

**Title: Article XI of the GATT, Supply Management, and Tariffication: Issues Facing the Canadian Egg and Poultry Industries in The Uruguay Round**

**Author: Cymbal, Wendy Caroline**

**Place :** University of Alberta (Canada) Degree: MSC, Date: 1991 pp: 186

**Source:** MAI 31/02, p. 604, (Summer 1993).

**Title: Socialist states and GATT (China),**

**Author: WU, GANG**

**Place :** University of Ottawa (Canada) Degree: LLM

Date: 1991 pp: 235, Advisor: Morrissette, F

**Source:** MAI 31/03, p.1081, (Feb 1993).

**Title: l'état et l'Agriculture Au Canada Dans Un Contexte de Liberalisation Des Echanges: Un Desengagement Reel? (French Text)**

**Author: Metivier, Louis**

**Place :** Université Laval (Canada), Degree: MA Date: 1991, pp: 121

**Advisor:** Hudon, Raymond, Source: MAI 31/02, p. 643, (Summer 1993).

**Language:** French

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TABLE OF ANNEXES  
ANNEX NO. 1

List of Basic Instruments and Selected Documents frequently used in the thesis

This documents covers the Decisions, reports, instruments, etc., published in Volume I, Volume I (revised), Volume II, Volume III, Volume IV, and the thirty-nine supplements. The table indicates the session and year to which the contents of each of the supplements are related.

<u>Volume/ Supplement (Supp.)</u>	<u>Session of Contracting Parties</u>	<u>Year coverage</u>
Volume I	-----	-----
Volume I (revised)	-----	-----
Volume II	First to Sixth and First Special Session	1948/1951
Volume III	-----	-----
Volume IV	-----	-----
First	Seventh	1952
Second	Eighth	1953
Third	Ninth	1954- 1955
Fourth	Tenth	1955
Fifth	Eleventh	1956
Sixth	Twelfth	1957
Seventh	Thirteenth	1958
Eighth	Fourteenth to Fifteenth	1959
Ninth	Sixteenth to Seventeenth	1960
Tenth	Eighteenth to Nineteenth	1961
Eleventh	Twentieth	1962
Twelfth	Twenty-first	1963-1964
Thirteenth	Twenty-second and	1964-1965
-----	Second Special Session	-----

<u>Volume/ Supplement</u>	<u>Session of Contracting Parties</u>	<u>Year coverage</u>
Fourteenth	Twenty-third	1965-1966
Fifteenth	Twenty-fourth	1966-1967
Sixteenth	Twenty-fifth	1967-1968
Seventeenth	Twenty-sixth	1968-1970
Eighteenth	Twenty-seventh	1970-1971
Nineteenth	Twenty-eight	1971-1972
Twentieth	Twenty-ninth	1972-1973
Twenty-first	Thirtieth	1973-1974
Twenty-second	Thirty-first	1974-1975
Twenty-third	Thirty-second	1975-1976
Twenty-fourth	Thirty-third	1976-1977
Twenty-fifth	Thirty-fourth	1977-1978
Twenty-sixth	Thirty-fifth	1978-1979
Twenty-seventh	Thirty-sixth	1979-1980
Twenty-eighth	Thirty-seventh	1980-1981
Twenty-ninth	Thirty-eighth	1981-1982
Thirtieth	Thirty-ninth	1982-1983
Thirty-first	Fortieth	1983-1984
Thirty-second	Forty-first & Fourth Special Se.	1984-1985
Thirty-third	Forty-second	1985-1986
Thirty-fourth	Forty-third	1986-1987
Thirty-fifth	Forty-fourth	1987-1988
Thirty-sixth	Forty-fifth	1988-1989
Thirty-seventh	Forty-sixth	1989-1990
Thirty-eighth	Forty-seventh	1990-1991
Thirty-nine	Forty-eighth	1991-1992

## List of some primary and unpublished reports regarding developing countries views and proposals in Uruguay Round.

Document No.	Title	Date
MTN.GNG5/ WGSP/ W/14	Special and Differential Treatment of Developing Countries	20/4/ 1990
MTN.GNG/ NG5/ WGSP/7	Draft Text on Sanitary and Phytosanitary Measures	20/11/1990
MTN.GNG/ NG5/ W/213	Statements by India	21/12/ 1987
MTN.GNG/ NG5/ W/ 37	Statement by Jamaica on Aggregate Support Measurement	2/ 03/ 1988
MTN.GNG/ NG5/ W/53	Statement by the Cairns Group	21/03/ 1988
MTN.GNG/ NG5/ W/ 57	Communication from Nigeria	20 /4/ 1988
MTN.GNG/ NG5/ W/199	Communication from Thailand on Special Safeguard Rules	5 /09/ 1990
MTN.GNG/ NG5/ W/204	Statement by Pakistan	19/09/ 1990
MTN.GNG/ NG5/ W/206	Working Paper Submitted by Net Food- Importing Developing Countries	10 /09/1990
MTN.GNG/ NG5/ W/209	Communication from Bolivia	17/10/ 1990
MTN.GNG/ NG5/ W/210	Communication from Peru	17/10/ 1990
MTN.GNG/ NG5/ W/212	Communication from Tanzania	17/10/ 1990
MTN.GNG/ NG5/ W/215	Communication from Hungary	5 /11/ 1990
MTN.GNG/ NG5/ W/216	Communication from Bangladesh	6 /11/ 1990
MTN.GNG/ NG5/ W/217	Communication from Venezuela	9 /11/ 1990
MTN.GNG/ NG5/ W/218	Communication from Nicaragua	23/ 11/ 1990
L/ 7125 & Add. 1	Council of Representatives- Trade Policy Review Mechanism	
" " GATT/ 1993- N0. 6	Egypt	1993
" " GATT/ 1992- No. 7	Brazil	1993
" " GATT/1992- N0. 8	Romania	1992
" " GATT/1992- N0. 10	Argentina	1992
" " GATT/ 1993- N0. 11	Philippines	1993
" " GATT/ 1992- No. 16	Uruguay	1992

**ANNEX NO. 2:**  
**( ANNEX II OF THE EEC TREATY )**

**LIST**

**Referred to in Article 38 of EC Treaty**

(1) No. in the Brussels Nomenclature	(2) Description of Products
Chapter 1	Live animals
Chapter 2	Meat and edible meat offals
Chapter 3	Fish, crustaceans and molluscs
Chapter 4	Dairy produce; birds' eggs; natural honey
Chapter 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3 unfit for human consumption.
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of melons or citrus fruit
Chapter 9	Coffee, tea and spices, excluding maté (heading No.09.03)
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt and starches; gluten; inulin
Chapter 12	Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
Chapter 13	
ex 13.03	Pectin
Chapter 15	
15.01	Lard and other rendered pig fat; rendered poultry fat
15.02	Unrendered fats of bovine cattle, sheep or goats; tallow (including 'premier jus') produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oils, of fish and marine mammals, whether or not refined
15.07	Fixed vegetable oils, fluid or solid, crude, refined or purified
15.12	Animal or vegetable fats and oils, hydrogenated, whether or



	not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fats
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
Chapter 16	Preparations of meat, of fish, of crustaceans or molluscs
Chapter 17	
17.01	Beet sugar and cane sugar, solid
17.02	Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
17.03	Molasses, whether or not decolourised
Chapter 18	
18.01	Cocoa beans, whole or broken, raw or roasted
18.02	Cocoa shells, husks, skins and waste
Chapter 20	Preparations of vegetables, fruit or other parts of plants
Chapter 22	
22.04	Grape must, in fermentation or with fermentation arrested other wise than by the addition of alcohol
22.05	Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol
Chapter 23	Residues and waste from the food industries; prepared animal fodder
Chapter 24	
24.01	Unmanufactured tobacco; tobacco refuse
Chapter 45	
45.01	Natural cork, unworked, crushed, granulated or ground; waste cork
Chapter 54	
54.01	Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)
Chapter 57	
57.01	True hemp ( <i>Cannabis sativa</i> ), raw or processed but not spun; <del>ov</del> and waste of true hemp (including pulled or gnetted rags or ropes)

### Annex NO. 3

## DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES.

(Known as Enabling Clause of 28 Nov. 1979).

Following negotiations within the framework of the Multilateral Trade Negotiations, the CONTRACTING PARTIES decide as follows:

1. Notwithstanding the provisions of Article 1 of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries<sup>1</sup> without according such treatment to other contracting parties.

2. The provisions of paragraph 1 apply to the following:<sup>2</sup>

- (a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences;<sup>3</sup>
- (b) differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;
- (c) regional or global arrangements entered into amongst less developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;
- (d) special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

3. Any differential and more favourable treatment provided under this clause:

- (a) shall be designed to facilitate and promote the trade of developing countries and not to create barriers to or create undue difficulties for the trade of any other contracting parties;
- (b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;
- (c) shall in the case of such treatment accorded by developed contracting parties to developing

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1- The words 'developing countries' as used in this text are to be understood to refer also to developing territories.

2 It would remain open for the CONTRACTING PARTIES to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

3 .As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of 'generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries'.

countries designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

4. Any contracting party taking action<sup>4</sup> to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:

(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI, less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

8. Particular account shall be taken of the serious difficulty of the least-developed

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4 . Nothing in these provisions shall affect the rights of contracting parties under the General Agreement.

countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.<sup>5</sup>

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5 . Glick Leslie Alan, *Multilateral Trade Negotiations World Trade After the Tokyo Round*, Rowman & Allanheld Publishers, USA, (1984) p.377.

**Annex No. 4****PUNTA DEL ESTE DECLARATION ON AGRICULTURE**

"CONTRACTING PARTIES agreed that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations by:

- (i) improving market access through Inter alia, the reduction of import barriers;
- (ii) improving competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;
- (iii) minimising the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations."

**Annex No. 5****SIGNATORIES TO THE FINAL ACT OF THE UR ON 15 APRIL 1994, MARRAKESH**

Algeria	Greece	Philippines
Angola	Guatemala	Poland
Antigua & -Barbuda	Guinea-Bis- sau	Portugal
Argentina	Honduras	Qatar
Australia	Hong Kong	Romania
Austria	Hungary	Saint Lucia
Bahrain	Iceland	Senegal
Bangladesh	India	Singapore
Barbados	Indonesia	Slovak-Re.
Belgium	Ireland	South Africa
Belize	Israel	Spain
Benin	Italy	Sri Lanka
Bolivia	Jamaica	Suriname
Botswana	Japan	Sweden
Brazil	Kenya	Switzerland
Brunei Darus -salam	Korea Rep.	Tanzania
Brundi	Kuwait	Thailand
Cameroon	Liechtenstein	Trinidad.and-
Canada	Luxembourg	Tobago
Central Af. R.	Macau	Tunisia
Chile	Madagascar	Turkey
Colombia	Malawi	Uganda
Congo	Malaysia	United.Arab-
Costa Rica	Mali	Emirates
Côte d' Ivoire	Malta	U K
Cuba	Mauritius	USA
Cyprus	Mexico	Uruguay
Czech Re.	Morocco	Venezuela
Denmark	Mozambique	Zai're
Dominican Re.	Myanmar	Zambia
Egypt	Namibia	Zimbabwe
El Salvador	Netherlands	Bahrain
EC	New zealand	China
Fiji	Nicaragua	Honduras
Finland	Nigeria	Paraguay
France	Niger	
Gabon	Norway	
Germany	Pakistan	
Ghana	Paraguay	
	Peru	

\* Source  
GATTFous  
Newsletter No. 107  
June-July-94 p.16

## AGREEMENT ON AGRICULTURE

Members,

*Having* decided to establish a basis for initiating a process of reform of trade in agriculture in line with the objectives of the negotiations as set out in the Punta del Este Declaration;

*Recalling* that the long-term objective as agreed at the Mid-Term Review "is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines";

*Recalling* further that "the above-mentioned long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets";

*Committed* to achieving specific binding commitments in each of the following areas: market access; domestic support; export competition; and to reaching an agreement on sanitary and phytosanitary issues;

*Having* agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical agricultural products as agreed at the Mid-Term Review, and products of particular importance to the diversification of production from the growing of illicit narcotic crops;

*Noting* that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment to developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries;

Hereby agree, as follows:

*Part I**Article 1 - Definition of Terms*

In this Agreement, unless the context otherwise requires:

- (a) "Aggregate Measurement of Support" and "AMS" mean the annual level of support expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product-specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify as exempt from reduction under Annex 2 to this Agreement, which is:
  - (i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a Member's Schedule; and
  - (ii) with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;
- (b) "basic product" in relation to domestic support commitments is defined as the product as close as practicable to the point of first sale as specified in a Member's Schedule and in the related supporting material;
- (c) "budgetary outlays" or "outlays" include revenue foregone;
- (d) "Equivalent Measurement of Support" means the annual level of support, expressed in monetary terms, provided to producers of a basic agricultural product through the application of one or more measures, the calculation of which in accordance with the AMS methodology is impracticable, other than support provided under programmes that qualify as exempt from reduction under Annex 2 to this Agreement, and which is:
  - (i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a Member's Schedule; and
  - (ii) with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 4 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;
- (e) "export subsidies" refer to subsidies contingent upon export performance including the export subsidies listed in Article 9 of this Agreement;
- (f) "implementation period" means the six-year period commencing in the year 1995, except that, for the purposes of Article 13, it means the nine-year period commencing in 1995



- (g) "market access concessions" include all market access commitments undertaken pursuant to this Agreement;
- (h) "Total Aggregate Measurement of Support" and "Total AMS" mean the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non-product-specific aggregate measurements of support and all equivalent measurements of support for agricultural products, and which is:
  - (i) with respect to support provided during the base period (i.e., the "Base Total AMS") and the maximum support permitted to be provided during any year of the implementation period or thereafter (i.e., the "Annual and Final Bound Commitment Levels"), as specified in Part IV of a Member's Schedule; and
  - (ii) with respect to the level of support actually provided during any year of the implementation period and thereafter (i.e., the "Current Total AMS"), calculated in accordance with the provisions of this Agreement, including Article 6, and with the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;
- (i) "year" in (f) above and in relation to the specific commitments of a Member refers to the calendar, financial or marketing year specified in the Schedule relating to that Member.

### *Article 2 - Product Coverage*

This Agreement applies to the products listed in Annex 1 to this Agreement, hereinafter referred to as agricultural products.

## *Part II*

### *Article 3 - Incorporation of Concessions and Commitments*

1. The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of the GATT 1994.
2. Subject to the provisions of Article 6 of this Agreement, a Member shall not provide support in favour of domestic producers in excess of the commitment levels specified in Section I of Part IV of its Schedule.
3. Subject to the provisions of paragraphs 2(b) and 4 of Article 9 of this Agreement, a Member shall not provide export subsidies listed in paragraph 1 of Article 9 in respect of the agricultural products or groups of products specified in Section II of Part IV of its Schedule in excess of the budgetary outlay and quantity commitment levels specified therein and shall not provide such subsidies in respect of any agricultural product not specified in that Section of its Schedule.

*Part III**Article 4 - Market Access*

1. Market access concessions contained in Schedules relate to bindings and reductions of tariffs and to other market access commitments as specified therein.
2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties<sup>1</sup>, except as otherwise provided for in Article 4 and Annex 5 hereof.

*Article 5 - Special Safeguard Provisions*

1. Notwithstanding the provisions of Article II:1(b) of the GATT 1994, any Member may take recourse to the provisions of paragraphs 4 and 5 below in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of this Article may be invoked, if:

- (i) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in paragraph 4 below; or, but not concurrently:
  - (ii) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price<sup>2</sup> for the product concerned
2. Imports under current and minimum access commitments established as part of a concession referred to in paragraph 1 above shall be counted for the purpose of determining the volume of imports required for invoking the provisions of sub-paragraph 1(i) and paragraph 4, but imports under such commitments shall not be affected by any additional duty imposed under either paragraph 4 or paragraph 5 below.

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<sup>1</sup>These measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints and similar border measures other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of the GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of the GATT 1994 or of the other Multilateral Trade Agreement in Annex 1A to the MTO.

<sup>2</sup>The reference price used to invoke the provisions of this sub-paragraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

3. Any supplies of the product in question which were *en route* on the basis of a contract settled before the additional duty is imposed under sub-paragraph 1(i) above and paragraph 4 below shall be exempted from any such additional duty provided that they may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of sub-paragraph 1(i) in that year.

4. Any additional duty imposed under sub-paragraph 1(i) above shall only be maintained until the end of the year in which it has been imposed, and may only be levied at a level which shall not exceed one-third of the level of the ordinary customs duty in effect in the year in which the action is taken. The trigger level shall be set according to the following schedule based on market access opportunities defined as imports as a percentage of the corresponding domestic consumption<sup>3</sup> during the three preceding years for which data are available:

- (a) where such market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent;
- (b) where such market access opportunities for a product are greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent;
- (c) where such market access opportunities for a product are greater than 30 per cent, the base trigger level shall equal 105 per cent.

In all cases the additional duty may be imposed in any year where the absolute volume of imports of the product concerned entering the customs territory of the Member granting the concession exceeds the sum of (x) the base trigger level set out above multiplied by the average quantity of imports during the three preceding years for which data are available and (y) the absolute volume change in domestic consumption of the product concerned in the most recent year for which data are available compared to the preceding year, provided that the trigger level shall not be less than 105 per cent of the average quantity of imports in (x) above.

5. The additional duty imposed under sub-paragraph 1(ii) above shall be set according to the following schedule:

- (a) if the difference between the c.i.f. import price of the shipment expressed in terms of the domestic currency (hereinafter referred to as the "import price") and the trigger price as defined under that sub-paragraph is less than or equal to 10 per cent of the trigger price, no additional duty shall be imposed;
- (b) if the difference between the import price and the trigger price (hereinafter referred to as the "difference") is greater than 10 per cent but less than or equal to 40 per cent of the trigger price, the additional duty shall equal 30 per cent of the amount by which the difference exceeds 10 per cent;
- (c) if the difference is greater than 40 per cent but less than or equal to 60 per cent of the trigger price, the additional duty shall equal 50 per cent of the amount by which the difference exceeds 40 per cent, plus the additional duty allowed under (b);

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<sup>3</sup>Where domestic consumption is not taken into account, the base trigger level under (a) below shall apply.

- (d) if the difference is greater than 60 per cent but less than or equal to 75 per cent, the additional duty shall equal 70 per cent of the amount by which the difference exceeds 60 per cent of the trigger price, plus the additional duties allowed under (b) and (c);
- (e) if the difference is greater than 75 per cent of the trigger price, the additional duty shall equal 90 per cent of the amount by which the difference exceeds 75 per cent, plus the additional duties allowed under (b), (c) and (d).

6. For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under paragraph 1(i) and paragraph 4 may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under paragraph 1(ii).

7. The operation of the special safeguard shall be carried out in a transparent manner. Any Member taking action under paragraph 1(i) above shall give notice in writing, including relevant data, to the Committee on Agriculture as far in advance as may be practicable and in any event within 10 days of the implementation of such action. In cases where changes in consumption volumes must be allocated to individual tariff lines subject to action under paragraph 4, relevant data shall include the information and methods used to allocate these changes. A Member taking action under paragraph 4 shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action. Any Member taking action under paragraph 1(ii) above shall give notice in writing, including relevant data, to the Committee on Agriculture within 10 days of the implementation of the first such action or, for perishable and seasonal products, the first action in any period. Members undertake, as far as practicable, not to take recourse to the provisions of paragraph 1(ii) where the volume of imports of the products concerned are declining. In either case a Member taking such action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

8. Where measures are taken in conformity with paragraphs 1 through 7 above, Members undertake not to have recourse, in respect of such measures, to the provisions of Article XIX:1(a) and XIX:3 of the GATT 1994 or paragraph 17 of the Agreement on Safeguards.

9. The provisions of this Article shall remain in force for the duration of the reform process as determined under Article 20.

#### *Part IV*

#### *Article 6 - Domestic Support Commitments*

1. The domestic support reduction commitments of each Member contained in Part IV of its Schedule shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement. The commitments are expressed in terms of Total Aggregate Measurement of Support and "Annual and Final Bound Commitment Levels".

2. In accordance with the Mid-Term Review Agreement that government measures of assistance whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to

low-income or resource poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.

3. A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

4. (a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce:

- (i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic product during the relevant year; and
- (ii) non-product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of the value of that Member's total agricultural production.

(b) For developing country Members, the *de minimis* percentage under this paragraph shall be 10 per cent.

5. (a) Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support if :

- (i) such payments are based on fixed area and yields; or
- (ii) such payments are made on 85 per cent or less of the base level of production; or
- (iii) livestock payments are made on a fixed number of head.

(b) The exemption from the reduction commitment for direct payments meeting the above criteria shall be reflected by the exclusion of the value of those direct payments in a Member's calculation of its Current Total AMS.

#### *Article 7 - General Disciplines on Domestic Support*

1. Each Member shall ensure that any domestic support measures in favour of agricultural producers which are not subject to reduction commitments because they qualify under the criteria set out in Annex 2 to this Agreement are maintained in conformity therewith.

2. (a) Any domestic support measure in favour of agricultural producers, including any modification to such measure, and any measure that is subsequently introduced that

cannot be shown to satisfy the criteria in Annex 2 to this Agreement or to be exempt from reduction by reason of any other provision of this Agreement shall be included in the Member's calculation of its Current Total AMS.

- (b) Where no Total AMS commitment exists in Part IV of a Member's Schedule, the Member shall not provide support to agricultural producers in excess of the relevant *de minimis* level set out in paragraph 4 of Article 6.

## Part V

### Article 8 - Export Competition Commitments

Each Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule.

### Article 9 - Export Subsidy Commitments

1. The following export subsidies are subject to reduction commitments under this Agreement:
  - (a) The provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a co-operative or other association of such producers, or to a marketing board, contingent on export performance.
  - (b) The sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market.
  - (c) Payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived.
  - (d) The provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight.
  - (e) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
  - (f) Subsidies on agricultural products contingent on their incorporation in exported products.

2. (a) Except as provided in sub-paragraph (b), the export subsidy commitment levels for each year of the implementation period, as specified in a Member's Schedule, represent with respect to the export subsidies listed in paragraph 1 of this Article:
- (i) in the case of budgetary outlay reduction commitments, the maximum level of expenditure for such subsidies that may be allocated or incurred in that year; and
  - (ii) in the case of export quantity reduction commitments, the maximum quantity of an agricultural product, or group of such products, in respect of which such export subsidies may be granted in that year.
- (b) In any of the second through fifth years of the implementation period, a Member may provide export subsidies listed in paragraph 1 above in a given year in excess of the corresponding annual commitment levels in respect of the products or groups of products specified in Part IV of the Member's Schedule, provided that:
- (i) the cumulative amounts of budgetary outlays for such subsidies, from the beginning of the implementation period through the year in question, does not exceed the cumulative amounts that would have resulted from full compliance with the relevant annual outlay commitment levels specified in the Member's Schedule by more than 3 per cent of the base period level of such budgetary outlays;
  - (ii) the cumulative quantities exported with the benefit of such export subsidies, from the beginning of the implementation period through the year in question, does not exceed the cumulative quantities that would have resulted from full compliance with the relevant annual quantity commitment levels specified in the Member's Schedule by more than 1.75 per cent of the base period quantities;
  - (iii) the total cumulative amounts of budgetary outlays for such export subsidies and the quantities benefiting from such export subsidies over the entire implementation period are no greater than the totals that would have resulted from full compliance with the relevant annual commitment levels specified in the Member's Schedule; and
  - (iv) the Member's budgetary outlays for export subsidies and the quantities benefiting from such subsidies, at the conclusion of the implementation period, are no greater than 64 per cent and 79 per cent of the 1986-1990 base period levels, respectively. For developing country Members these percentages shall be 76 and 86 per cent, respectively.

3 Commitments relating to limitations on the extension of the scope of export subsidization are as specified in Schedules.

4 During the implementation period developing country Members shall not be required to undertake commitments in respect of the export subsidies listed in sub-paragraphs (d) and (e) of paragraph 1 above provided that these are not applied in a manner that would circumvent reduction commitments.

*Article 10 - Prevention of Circumvention of Export Subsidy Commitments*

1. Export subsidies not listed in Article 9(1) of this Agreement shall not be applied in a manner which results in, or which threatens to lead to, circumvention of export subsidy commitments; nor shall non-commercial transactions be used to circumvent such commitments.
2. Members undertake to work toward the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith.
3. Any Member which claims that any quantity exported in excess of a reduction commitment level is not subsidized must establish that no export subsidy, whether listed in Article 9 or not, has been granted in respect of the quantity of exports in question.
4. Members donors of international food aid shall ensure:
  - (a) that the provision of international food aid is not tied directly or indirectly to commercial exports of agricultural products to recipient countries;
  - (b) that international food aid transactions, including bilateral food aid which is monetised, shall be carried out in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations" including, where appropriate, the system of Usual Marketing Requirements (UMRs); and
  - (c) that such aid shall be provided to the extent possible in fully grant form or on terms no less concessional than those provided for in Article IV of the Food Aid Convention 1986.

*Article 11 - Incorporated Products*

In no case may the per unit subsidy paid on an incorporated agricultural primary product exceed the per unit export subsidy that would be payable on exports of the primary product as such.

*Part VI**Article 12 - Disciplines on Export Prohibitions and Restrictions*

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of the GATT 1994, the Member shall observe the following provisions:
  - (i) the Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing Members' food security;



- (ii) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.
2. The provisions of this Article shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.

## *Part VII*

### *Article 13 - Due Restraint*

During the implementation period, notwithstanding the provisions of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement"):

1. Domestic support measures that conform fully to the provisions of Annex 2 to this Agreement shall be:
  - (a) non-actionable subsidies for purposes of countervailing duties<sup>4</sup>;
  - (b) exempt from actions based on Article XVI of the GATT 1994 and Part III of the Subsidies Agreement; and
  - (c) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of the GATT 1994, in the sense of Article XXIII:1(b) of the GATT 1994.
2. Domestic support measures that conform fully to the provisions of Article 6 of this Agreement including direct payments that conform to the requirements of paragraph 5 thereof, as reflected in each Member's Schedule, as well as domestic support within *de minimis* levels and in conformity with paragraph 2 of Article 6, shall be:
  - (a) exempt from the imposition of countervailing duties unless a determination of injury or threat thereof is made in accordance with Article VI of the GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations;
  - (b) exempt from actions based on Article XVI:1 of the GATT 1994 or Articles 5 and 6 of the Subsidies Agreement, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year; and

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<sup>4</sup>"Countervailing duties" where referred to in this Article are those covered by Article VI of the GATT 1994 and Part V of the Agreement on Subsidies and Countervailing Duties.

- (c) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of the GATT 1994, in the sense of Article XXIII:1(b) of the GATT 1994, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year.
3. Export subsidies that conform fully to the provisions of Part V of this Agreement, as reflected in each Member's Schedule of Commitments, shall be:
- (a) subject to countervailing duties only upon a determination of injury or threat thereof based on volume, effect on prices, or consequent impact in accordance with Article VI of the GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations; and
  - (b) exempt from actions based on Article XVI of the GATT 1994 or Articles 3, 5 and 6 of the Subsidies Agreement.

### *Part VIII*

#### *Article 14 - Sanitary and Phytosanitary Measures*

Members agree to give effect to the Agreement on Sanitary and Phytosanitary Measures.

### *Part IX*

#### *Article 15 - Special and Differential Treatment*

1. In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.
2. Developing countries shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least developed country Members shall not be required to undertake reduction commitments.

### *Part X*

#### *Article 16 - Least-developed and Net Food-Importing Developing Countries*

1. Developed country Members shall take such action as is provided for within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries.
2. The Committee on Agriculture shall monitor, as appropriate, the follow-up to this Decision.

*Part XI*

*Article 17 - Committee on Agriculture*

A Committee on Agriculture shall be established.

*Article 18 - Review of the Implementation of Commitments*

1. Progress in the implementation of commitments negotiated under the Uruguay Round reform programme shall be reviewed by the Committee on Agriculture.
2. The review process shall be undertaken on the basis of notifications submitted by Members in relation to such matters and at such intervals as shall be determined, as well as on the basis of such documentation as the MTO Secretariat may be requested to prepare in order to facilitate the review process.
3. In addition to the notifications to be submitted under paragraph 2, any new domestic support measure, or modification of an existing measure, for which exemption from reduction is claimed shall be notified promptly. This notification shall contain details of the new or modified measure and its conformity with the agreed criteria as set out either in Article 6 or in Annex 2 to this Agreement.
4. In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments.
5. Members agree to consult annually in the Committee on Agriculture with respect to their participation in the normal growth of world trade in agricultural products within the framework of the commitments on export subsidies under this Agreement.
6. The review process shall provide an opportunity for Members to raise any matter relevant to the implementation of commitments under the reform programme as set out in this Agreement.
7. Any Member may bring to the attention of the Committee on Agriculture any measure which it considers ought to have been notified by another Member.

*Article 19 - Consultation and Dispute Settlement*

The provisions of Articles XXII and XXIII of the GATT 1994, as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes, shall apply to consultations and the settlement of disputes under this Agreement.

*Part XII*

*Article 20 - Continuation of the Reform Process*

Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

- the experience to that date from implementing the reduction commitments;
- the effects of the reduction commitments on world trade in agriculture;
- non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement, and
- what further commitments are necessary to achieve the above mentioned long-term objectives.

### *Part XIII*

#### *Article 21 - Final Provisions*

1. The provisions of the GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the MTO shall apply subject to the provisions of this Agreement.
2. The Annexes to this Agreement are hereby made an integral part of this Agreement.

## ANNEX 1

### PRODUCT COVERAGE

1. This Agreement shall cover the following products:

- (i) HS Chapters 1 to 24 less fish and fish products, plus
- (ii)
 

HS Code	29.05.43	(mannitol)
HS Code	29.05.44	(sorbitol)
HS Heading	33.01	(essential oils)
HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
HS Code	38.09.10	(finishing agents)
HS Code	38.23.60	(sorbitol n.e.p.)
HS Headings	41.01 to 41.03	(hides and skins)
HS Heading	43.01	(raw furskins)
HS Headings	50.01 to 50.03	(raw silk and silk waste)
HS Headings	51.01 to 51.03	(wool and animal hair)
HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
HS Heading	53.01	(raw flax)
HS Heading	53.02	(raw hemp)

2. The foregoing shall not limit the product coverage of the Agreement on Sanitary and Phytosanitary Measures.

## ANNEX 2

### DOMESTIC SUPPORT: THE BASIS FOR EXEMPTION FROM THE REDUCTION COMMITMENTS

1. Domestic support policies for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade distortion effects or effects on production. Accordingly, all policies for which exemption is claimed shall conform to the following basic criteria:

- (i) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and,
- (ii) the support in question shall not have the effect of providing price support to producers;

plus policy-specific criteria and conditions as set out below.

#### *Government Service Programmes*

#### 2. General services

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or the rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria in paragraph 1 above and policy-specific conditions where set out below:

- (i) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (ii) pest and disease control, including general and product-specific pest and disease control measures, such as early warning systems, quarantine and eradication;
- (iii) training services, including both general and specialist training facilities;
- (iv) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;
- (v) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;
- (vi) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and
- (vii) infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes,

and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally-available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. Public stockholding for food security purposes<sup>5</sup>

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

4. Domestic food aid<sup>6</sup>

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

5. Direct payments to producers

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 to 13 below. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 to 13, it shall conform to criteria (ii) to (v) of paragraph 6 in addition to the general criteria set out in paragraph 1.

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<sup>5</sup>For the purposes of paragraph 3 of this Annex, Governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.

<sup>5 & 6</sup>For the purposes of paragraphs 3 and 4 of this Annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

6. Decoupled income support

- (i) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.
- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (iv) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.
- (v) No production shall be required in order to receive such payments.

7. Government financial participation in income insurance and income safety-net programmes

- (i) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.
- (ii) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.
- (iii) The amount of any such payments shall relate solely to income; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.
- (iv) Where a producer receives in the same year payments under this paragraph and under paragraph 8 below (relief from natural disasters), the total of such payments shall be less than 100 per cent of the producer's total loss.

8. Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters

- (i) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three year average based on the preceding five-year period, excluding the highest and the lowest entry.



- (ii) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.
- (iii) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.
- (iv) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (ii) above.
- (v) Where a producer receives in the same year payments under this paragraph and under paragraph 7 above (income insurance and income safety-net programmes), the total of such payments shall be less than 100 per cent of the producer's total loss.

9. Structural adjustment assistance provided through producer retirement programmes

- (i) Eligibility for such payments shall be determined by reference to clearly-defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.
- (ii) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. Structural adjustment assistance provided through resource retirement programmes

- (i) Eligibility for such payments shall be determined by reference to clearly-defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.
- (ii) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of 3 years, and in the case of livestock on its slaughter or definitive permanent disposal.
- (iii) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.
- (iv) Payments shall not be related to either the type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production.

11. Structural adjustment assistance provided through investment aids

- (i) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.
- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under (v) below.

- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (iv) The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.
- (v) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.
- (vi) The payments shall be limited to the amount required to compensate for the structural disadvantage.

12. Payments under environmental programmes

- (i) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.
- (ii) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. Payments under regional assistance programmes

- (i) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.
- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.
- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (iv) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.
- (v) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.
- (vi) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

### ANNEX 3

#### DOMESTIC SUPPORT: CALCULATION OF AGGREGATE MEASUREMENT OF SUPPORT

1. Subject to the provisions of Article 6, an Aggregate Measurement of Support (AMS) shall be calculated on a product-specific basis for each basic product (defined as the product as close as practicable to the point of first sale) receiving market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment ("other non-exempt policies"). Support which is non-product specific shall be totalled into one non-product-specific AMS in total monetary terms.
2. Subsidies under paragraph 1 shall include both budgetary outlays and revenue foregone by governments or their agents.
3. Support at both the national and sub-national level shall be included.
4. Specific agricultural levies or fees paid by producers shall be deducted from the AMS.
5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support.
6. For each basic product, a specific AMS shall be established, expressed in total monetary value terms.
7. The AMS shall be calculated as close as practicable to the point of first sale of the product concerned. Policies directed at agricultural processors shall be included to the extent that such policies benefit the producers of the basic products.
8. Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS.
9. The fixed external reference price shall be based on the years 1986 to 1988 and shall generally be the average f.o.b. unit value for the product concerned in a net exporting country and the average c.i.f. unit value for the product concerned in a net importing country in the base period. The fixed reference price may be adjusted for quality differences as necessary.
10. Non-exempt direct payments: non-exempt direct payments which are dependent on a price gap shall be calculated either using the gap between the fixed reference price and the applied administered price multiplied by the quantity of production eligible to receive the administered price, or using budgetary outlays.
11. The fixed reference price shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates.
12. Non-exempt direct payments which are based on factors other than price shall be measured using budgetary outlays.
13. Other non-exempt policies, including input subsidies and other policies such as marketing cost reduction measures: the value of such policies shall be measured using government budgetary outlays

or, where the use of budgetary outlays does not reflect the full extent of the subsidy concerned, the basis for calculating the subsidy shall be the gap between the price of the subsidised good or service and a representative market price for a similar good or service multiplied by the quantity of the good or service.

#### ANNEX 4

### DOMESTIC SUPPORT: CALCULATION OF EQUIVALENT MEASUREMENT OF SUPPORT

1. Subject to the provisions of Article 6, equivalent measurements of support shall be calculated in respect of all products where market price support as defined in Annex 3 exists but for which calculation of this component of the AMS is not practicable. For such products the base level for implementation of the domestic support reduction commitments shall consist of a market price support component expressed in terms of equivalent measurements of support under paragraph 2 below, as well as any non-exempt direct payments and other non-exempt support, which shall be evaluated as provided for under paragraph 3 below. Support at both national and sub-national level shall be included.
2. The equivalent measurements of support provided for in paragraph 1 shall be calculated on a product-specific basis for all products as close as practicable to the point of first sale ("basic products") receiving market price support and for which the calculation of the market price support component of the AMS is not practicable. For those basic products, equivalent measurements of market price support shall be made using the applied administered price and the quantity of production eligible to receive that price or, where this is not practicable, on budgetary outlays used to maintain the producer price.
3. Where products falling under paragraph 1 above are the subject of non-exempt direct payments or any other product-specific subsidy not exempted from the reduction commitment, the basis for equivalent measurements of support concerning these measures shall be calculations as for the corresponding AMS components (specified in paragraphs 10 to 13 of Annex 3).
4. Equivalent measurements of support shall be calculated on the amount of subsidy as close as practicable to the point of first sale of the product concerned. Policies directed at agricultural processors shall be included to the extent that such policies benefit the producers of the basic products. Specific agricultural levies or fees paid by producers shall reduce the equivalent measurements of support by a corresponding amount.

## ANNEX 5

### SPECIAL TREATMENT UNDER ARTICLE 4:2

#### *Section A*

1. The provisions of Article 4:2 of this Agreement shall not apply with effect from the entry into force of this Agreement to any primary agricultural product and its worked and/or prepared products ("designated products") in respect of which the following conditions are complied with (hereinafter referred to as "special treatment"):

- (a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ("the base period");
- (b) no export subsidies have been provided since the beginning of the base period for the designated products;
- (c) effective production restricting measures are applied to the primary agricultural product;
- (d) such products are designated with the symbol "ST-Annex 5" in Section IB of Part I of a Member's Schedule annexed to the Uruguay Round (1994) Protocol as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and
- (e) minimum access opportunities in respect of the designated products correspond, as specified in Section IB of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to apply special treatment in respect of the designated products by complying with the provisions of paragraph 6 below. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 above after the end of the implementation period shall be completed within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.

4. If it is agreed as a result of the negotiation referred to in paragraph 3 above that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

5. Where the special treatment is not to be continued at the end of the implementation period, the Member concerned shall implement the provisions of paragraph 6 below. In such a case, after the end of the implementation period the minimum access opportunities for the designated products

shall be maintained at the level of 8 per cent of corresponding domestic consumption in the base period in the Schedule of the Member concerned.

6. Border measures other than ordinary customs duties maintained in respect of the designated products shall become subject to the provisions of Article 4:2 of this Agreement with effect from the beginning of the year in which the special treatment ceases to apply. Such products shall be subject to ordinary customs duties, which shall be bound in the Schedule of the Member concerned and applied, from the beginning of the year in which special treatment ceases and thereafter, at such rates as would have been applicable had a reduction of at least 15 per cent been implemented over the implementation period in equal annual instalments. These duties shall be established on the basis of tariff equivalents to be calculated in accordance with the guidelines prescribed in the attachment hereto.

### *Section B*

7. The provisions of Article 4:2 of this Agreement shall also not apply with effect from the entry into force of this Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d) above, as they apply to the products concerned, are complied with:

- minimum access opportunities in respect of the products concerned, as specified in Section IB of Part I of the Schedule of the developing country Member concerned, correspond to 1 per cent of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period and are increased in equal annual instalments to 2 per cent of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2 per cent of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4 per cent of corresponding domestic consumption in the base period until the beginning of the tenth year. Thereafter, the level of minimum access opportunities resulting from this formula in the tenth year shall be maintained in the Schedule of the developing country Member concerned.
- appropriate market access opportunities have been provided for in other products under this Agreement.

8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 above after the end of the tenth year following the beginning of the implementation period shall be initiated and completed within the time-frame of the tenth year itself following the beginning of the implementation period.

9. If it is agreed as a result of the negotiation referred to in paragraph 8 above that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.

10. In the event that special treatment under paragraph 7 above is not to be continued beyond the tenth year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 above shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.

Attachment to Annex 5

Guidelines for the Calculation of Tariff  
Equivalents for the Specific Purpose Specified in  
Paragraphs 6 and 10 of this Annex

1. The calculation of the tariff equivalents, whether expressed as *ad valorem* or specific rates, shall be made using the actual difference between internal and external prices in a transparent manner. Data used shall be for the years 1986 to 1988. Tariff equivalents:
  - (i) shall primarily be established at the four-digit level of the HS;
  - (ii) shall be established at the six-digit or a more detailed level of the HS wherever appropriate;
  - (iii) shall generally be established for worked and/or prepared products by multiplying the specific tariff equivalent(s) for the primary agricultural product(s) by the proportion(s) in value terms or in physical terms as appropriate of the primary agricultural product(s) in the worked and/or prepared products, and take account, where necessary, of any additional elements currently providing protection to industry.
2. External prices shall be, in general, actual average c.i.f. unit values for the importing country. Where average c.i.f. unit values are not available or appropriate, external prices shall be either:
  - (i) appropriate average c.i.f. unit values of a near country; or
  - (ii) estimated from average f.o.b. unit values of (an) appropriate major exporter(s) adjusted by adding an estimate of insurance, freight and other relevant costs to the importing country.
3. The external prices shall generally be converted to domestic currencies using the annual average market exchange rate for the same period as the price data.
4. The internal price shall generally be a representative wholesale price ruling in the domestic market or an estimate of that price where adequate data is not available.
5. The initial tariff equivalents may be adjusted, where necessary, to take account of differences in quality or variety using an appropriate coefficient.
6. Where a tariff equivalent resulting from these guidelines is negative or lower than the current bound rate, the initial tariff equivalent may be established at the current bound rate or on the basis of national offers for that product.
7. Where an adjustment is made to the level of a tariff equivalent which would have resulted from the above guidelines, the Member concerned shall afford, on request, full opportunities for consultation with a view to negotiating appropriate solutions.